



11/04/2014

Ref:

**Oifig an tAire Iompair, Turasóireachta agus Spóirt
Memorandum for the Government
State Airports (Shannon Group) Bill 2014**

1. Decision Sought

Approval to be given to:

To Note:

(vi) [REDACTED]

10. Exemption of Shannon Group and its subsidiaries from FOI

As a commercial company, SAA is currently exempt from the provisions of the FOI Acts. Shannon Development on the other hand is a non-commercial State company which received some Exchequer funding for its operations and is currently prescribed under SI No 126 of 2001 for the purposes of the FOI Acts.

The restructured Shannon Development will be a commercial company and both it and SAA will become wholly-owned subsidiaries of the new commercial State company, Shannon Group plc.

The Ministers are anxious to ensure that there is nothing to suggest, directly or indirectly, that Shannon Group and its subsidiaries are anything other than hard-nosed commercial companies. In this regard, it will be important to ensure that Shannon Group and its subsidiaries are not subject to FOI legislation.

The Minister of Public Expenditure and Reform is currently sponsoring a new FOI Bill through the Oireachtas, the Freedom of Information Bill 2013. Under this Bill, all new public bodies will be automatically subject to FOI. (Many existing exempt agencies will remain exempt and these are listed in the Schedule attached to the Bill and include commercial State companies such as, for example, DAA, SAA, Cork Airport Authority, the Irish Aviation Authority, ESB, BGE, VHI, etc.). The new Bill provides for the repeal of the existing FOI Acts 1997 and 2003.

Provision has been made in the new FOI Bill for the Minister for Public Expenditure and Reform, having consulted with the relevant Oireachtas Committee, to make an Order exempting a public body, partially or totally, from FOI. If this FOI Bill is enacted before the Shannon Group Bill, Shannon Group plc, on establishment, will be automatically subject to FOI. This will be contrary to the commercial ethos of the new company. Shannon Development will also remain subject to FOI (while SAA will remain exempt). This situation will persist unless and until the Minister for Public Expenditure and Reform makes an Order under the new FOI Act to exempt Shannon Group (on its establishment) and its subsidiaries.

The case for fully exempting Shannon Group and its subsidiaries from the scope of FOI is clear. It is being established as a fully-fledged commercial State company to oversee renewed sustainable growth of Shannon airport and to bring a new, commercial, focus to the development and expansion of businesses within Shannon Development's property portfolio and in particular, the expansion of aviation businesses in and around the airport campus. With regard to the latter, Shannon will be in competition with other existing and emerging global centres for aviation services particularly in Asia. The airport subsidiary, SAA, is in competition with DAA and other European airports, particularly in the case of long haul traffic. Neither Shannon Group nor its subsidiaries will receive any Exchequer/public funding. The potential for substantial new job creation in the Shannon/Limerick, arising directly and indirectly from the commercial success of Shannon Group, is a particular focus from a Government policy point of view. Shannon Development was fundamentally restructured last year in preparation for this new commercial focus with the transfer of its enterprise support and tourism functions, which were partly funded by the Exchequer, from the company to the IDA, Enterprise Ireland and Fáilte Ireland. SAA is, and will remain, exempt under FOI. It follows that their new parent, Shannon Group, which will be a fully commercial company, must be exempted from FOI on the same basis as other commercial State companies are exempt such as DAA, ESB, IAA, etc.

The Ministers are anxious to ensure that there is no 'gap' between the establishment of Shannon Group plc and its exemption from FOI. Under the new FOI Bill (which it is assumed will likely be enacted prior to establishment of Shannon Group), the Minister for Public Expenditure and Reform may, by Order, and having consulted the appropriate Oireachtas Committee, exempt a particular public body from FOI. The Ministers will seek the cooperation of the Minister for Public Expenditure and Reform to ensure that an exemption Order in respect of Shannon Group and its subsidiaries will be made contemporaneously with the establishment of the new company. (If, however, the Shannon Group Bill is enacted prior to the FOI Bill, the Ministers will require that Shannon Development be 'de-listed' from the scope of the existing FOI Acts.)



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Uimhir Thagartha: S22950D

CRUINNIÚ RIALTAIS

Dáta: 15/04/2014

Ábhar: State Airports (Shannon Group) Bill 2014

An tAire a thionscain: Oifig an tAire Iompair, Turasóireachta agus Spóirt

Dáta an Mheabhráin: 11/04/2014

Cinneadh an Rialtais:

(4) noted:

(iii) that the Ministers will consult the Minister for Public Expenditure and Reform on the application of the FOI legislation to the Shannon Group and its subsidiaries, in the context of the overall FOI reform package.

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Ard-Rúnaí an Rialtais

Cóip curtha chuig: Oifig an Aire Airgeadais, Oifig an Taoisigh, Oifig an Aire Leanaí agus Gnóthaí Óige, Oifig an Aire Ealaíon, Oidhreachta agus Gaeltachta, Oifig an Aire Caiteachais Phoiblí agus Athchóirithe, Oifig an Aire Sláinte, Oifig an Aire Gnóthaí Eachtracha agus Trádála, Oifig an Aire Dlí agus Cirt agus Comhionannais, Oifig an Aire Talmhaíochta, Bia agus Mara, Oifig an Árd-Aighne, Oifig an Aire Cosanta, Oifig an Aire Post, Fiontar agus Nuálaíochta, Oifig an Aire Comhshaoil, Pobail agus Rialtais Áitiúil, Oifig an Aire Tithíochta, Pleanála, Pobail agus Rialtais Áitiúil, Oifig an Aire Ealaíon, Oidhreachta, Gnóthaí Réigiúnacha, Tuaithe agus Gaeltachta, Oifig an Aire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha, Oifig an Aire Oideachais agus Scileanna, Oifig an Aire Coimirce Sóisialaí, Oifig an Aire Cumarsáide, Gníomhaithe ar son na hAeráide agus Comhshaoil, Oifig an Aire Stáit ag Roinn an Taoisigh



16/05/2014

Ref:

**Oifig an Aire Oideachais agus Scileanna
Memorandum for the Government
Additional Provisions for Inclusion in the General Scheme of an Education
(Miscellaneous Provisions) Bill 2014**

1. Decision Sought

The Minister for Education and Skills seeks the approval of the Government to arrange for the drafting of a provision to-

- A) amend section 53 of the Education Act 1998 to extend the provision to confer the power to refuse access to certain assessment and examination information on any public body which is prescribed in regulations made by the Minister following consultation with the Minister for Public Expenditure and Reform, and

2. Background/Reason for Memorandum

Amendment of section 53 of the Education Act 1998

It is agreed Government policy that access should not be granted to comparative data arising from certain examinations that take place in schools and other similar institutions. Failure to provide such a prohibition would in essence permit the creation and publication of crude league tables which would have the potential, particularly as they would not be contextualised, to be damaging to schools and similar institutions. This would be prejudicial to the wider educational interests of students.

This policy is underpinned by section 53 of the Education Act 1998 (as amended by section 5 of the Education (Miscellaneous Provisions) Act 2007). This provision permits the Minister for Education and Skills, or the State Examinations Commission, to refuse access to information which would enable the compilation of information in relation to the comparative performance of schools in respect of the academic achievement of their students. This includes the overall results in any year of students in a particular school in an examination or the comparative overall results in any year of students in different schools in an examination. This policy was publicly debated during the National Education Convention in 1993, and the creation of section 53 of the 1998 Act reflected those debates. As settled Government policy for some time, the Minister for Education and Skills does not propose to resile from this position at this time.

Section 53 was considered by the Supreme Court in *Re: Freedom of Information Act 1997, Sheedy v. The Information Commissioner* [2005] 2 IR 272. In allowing an appeal from the High Court, the Supreme Court held that the release of information which could provide a basis for comparison between various schools could be refused by the Minister under section 53.

The FOI Bill 2013 will have the effect of broadening the application of FOI to public bodies, including education and training boards (ETBs), their schools and other education or training facilities. Schedule 1, Part 1 of the FOI Bill 2013 contains a partial exemption to ETBs and their schools with regard to the release of records which would enable the compilation of information concerning the comparative performance of schools. However the Minister is of the view that the partial exemption needs to be extended to include other educational and training facilities including those under the management of ETBs, and other prescribed public bodies which may hold examination and assessment records.

In reviewing section 53 of the 1998 Act, the Minister has taken the opportunity to ensure that this type of information is protected, regardless of the public body which holds the information or the nature of the educational or training facility which could be the subject of comparison. This amendment to section 53 is designed to achieve this and therefore ensures that the Government policy on protecting information relating to examinations and assessment remains in place. This will ensure it is applied only where it is necessary without creating additional restrictions over and above existing practices.

If this legislation can be enacted prior to the enactment of the FOI Bill 2013, this amendment will negate the need for the inclusion in that Bill of any partial exemptions for educational bodies, instead maintaining the position where access to comparative educational performance data is regulated by the Education Acts, rather than the FOI Acts.

3. Summary of Purpose of the Proposed Provision

Amendment of section 53 of the Education Act 1998

Section 53 of the Education Act 1998 (as amended) will be further amended to give public bodies within the meaning of section 6 of the Freedom of Information Bill 2013, and which have been prescribed for these purposes, the necessary powers to prevent the release of assessment and examination data under their control which could enable the compilation of school league tables. It is being extended to include assessment results to ensure the provision is future-proofed. This is of particular importance in light of the implementation of the Junior Cycle programme and its school based assessment component. The amended provision will ensure that all aspects of assessment, including Standardised Tests at both primary and post-primary, in public bodies are safe-guarded in accordance with agreed Government policy.

Given that the provision will apply to all public bodies prescribed by the Minister following consultation with the Minister for Public Expenditure and Reform, it is considered necessary to provide that the refusal is mandatory rather than discretionary in nature. This will ensure a consistency in approach and buttress the integrity of Government policy on this important issue. The General Scheme of the necessary provision to give effect to this is attached at **Appendix A**.



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Uimhir Thagartha: S180/20/10/1813

CRUINNIÚ RIALTAIS

Dáta: 20/05/2014

Ábhar: Additional Provisions for Inclusion in the General Scheme of an Education (Miscellaneous Provisions) Bill 2014

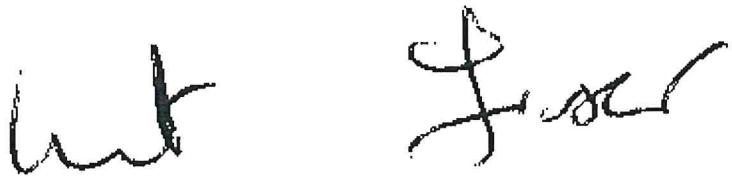
An tAire a thionscain: Oifig an Aire Oideachais agus Scileanna

Dáta an Mheabhráin: 16/05/2014

Cinneadh an Rialtais:

(1) approved the drafting of a provision to:

- (i) amend section 53 of the Education Act 1998 to extend the provision to confer the power to refuse access to certain assessment and examination information on any public body which is prescribed in regulations made by the Minister for Education and Skills following consultation with the Minister for Public Expenditure and Reform; and



Ard-Rúnaí an Rialtais

Cóip curtha chuig: Oifig an Aire Airgeadais, Oifig an Taoisigh, Oifig an Aire Iompair, Turasóireachta agus Spóirt, Oifig an Aire Leanaí agus Gnóthaí Óige, Oifig an Aire Ealaíon, Oidhreachta agus Gaeltachta, Oifig an Aire Caiteachais Phoiblí agus Athchóirithe, Oifig an Aire Sláinte, Oifig an Aire Gnóthaí Eachtracha agus Trádála, Oifig an Aire Dlí agus Cirt agus Comhionannais, Oifig an Aire Talmhaíochta, Bia agus Mara, Oifig an Árd-Aighne, Oifig an Aire Cosanta, Oifig an Aire Post, Fiontar agus Nuálaíochta, Oifig an Aire Comhshaoil, Pobail agus Rialtais Áitiúil., Oifig an Aire Tithíochta, Pleanála, Pobail agus Rialtais Áitiúil, Oifig an Aire Ealaíon, Oidhreachta, Gnóthaí Réigiúnacha, Tuaithe agus Gaeltachta, Oifig an Aire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha, Oifig an Aire Coimirce Sóisialaí, Oifig an Aire Cumarsáide, Gníomhaithe ar son na hAeráide agus Comhshaoil, Oifig an Aire Stáit ag Roinn an Taoisigh



20/06/2014

Ref:

**Oifig an Aire Oideachais agus Scileanna
Memorandum for the Government
Education (Miscellaneous Provisions) Bill 2014**

2. Background/Reason for Memorandum

The FOI Bill 2013 will have the effect of broadening the application of FOI to public bodies, including education and training boards (ETBs), their schools and other education or training facilities. Schedule 1, Part 1 of the FOI Bill 2013 contains a partial exemption to ETBs and their schools with regard to the release of records which would enable the compilation of information concerning the comparative performance of schools. However the Minister is of the view that the partial exemption needs to be extended to include other educational and training facilities including those under the management of ETBs, and public bodies which may hold examination and assessment data.

3. Main Provisions of the Bill

3.3 Amendment of section 53 of the Education Act 1998

This section reflects the intent and purpose of the Draft Provision approved by the Government at its meeting of 16 May 2014 (Decision S180/20/10/1813).

Section 7 provides for a refusal of access to specified information through an amendment of section 53 of the Education Act 1998 (as amended by Section 5 of the Education (Miscellaneous Provision) Act 2007). Section 53 is amended by the substitution of a new section 53 which confers on public bodies (within the meaning of the Freedom of Information Act 1997) prescribed in regulations made by the Minister following consultation with the Minister for Public Expenditure and Reform, the necessary powers to refuse access to information which would enable the compilation of information in relation to the comparative performance of schools in respect of the academic achievement of their students or learners.

In amending section 53 of the Education Act 1998, the Minister's intention is to ensure that the prohibition on the release of examination and assessment data applies only where deemed necessary. Accordingly, the provision differs from the original proposal in that the prohibition to release examination and assessment data is discretionary rather than mandatory in order to ensure that prescribed public bodies which currently release or share assessment and examination data with other public bodies for purposes of research etc. will continue to be able to do so. In such instances the prescribed public body may provide the material subject to the Minister's approval or direction.

Section 7(4) of the Education (Miscellaneous Provisions) Bill 2014 defines a public body as having the same meaning as it has in the FOI Act 1997. Accordingly it is the Department's intention to request the Department of Public Expenditure and Reform to include a technical amendment in the FOI Bill 2013 to update this definition when it is replaced by the new definition as provided for in the FOI Bill 2013.



27/06/2014

Ref: July 2014

**Oifig an Aire Caiteachais Phoiblí agus Athchóirithe
Memorandum for the Government
Report Stage Amendments for Freedom of Information Bill 2013/ Draft Code
of Practice for Freedom of Information**

1. Decision Sought

1.1 The Minister for Public Expenditure and Reform requests Government approval for

1.1.1 the amendments to the FOI Bill 2013, including those in relation to reform of the FOI fee regime, which the Minister proposes to present at Report Stage in the Dáil (Paras 5 and 6 below and Appendix I);

1.1.2 his proposal to remove the upfront FOI fee of €15 to restore Freedom of Information legislation in line with the commitment in the Programme for Government;

1.1.3 his intention to publish the detailed assessment of the case for reform of the FOI fees regime and the removal of the application fee which sets out the basis to the proposed approach (Appendix II).

1.1.4 the publication on the Departmental website of the Report of the External Review Group on FOI attached to this Memorandum (Appendix III);

1.1.5 the publication of the draft Code of Practice for Freedom of Information (FOI) attached to this Memorandum (Appendix IV); and

1.1.6 the initiation of a short public consultation on the draft Code to assist in its finalization.

2. Matters for Noting

2.1 The Minister requests the Government to note that:-

2.1.1 the proposed removal of the FOI application fee is the main element of a series of reforms to the existing FOI fee regime, including in particular to search, retrieval and copying (SRC) fees, to ensure their consistent application by all public bodies and to ensure more effective control and administration of FOI requests;

2.1.2 it is also proposed that the FOI Bill when enacted will include a number of provisions to underpin the proposed policy approach on FOI fees including:-

- the introduction of publication schemes to require a much more proactive publication of records outside of FOI (including information sought routinely under FOI);

- the scope for greater use of powers to refuse requests on administrative grounds;
- the adoption of an FOI Code of Practice designed to address current challenges relating to the operation of FOI and the administrative burden imposed to achieve a much more consistent, effective and efficient approach by public bodies to dealing with FOI requests.

The development of an FOI Code as well as legislative changes must also be complemented by the strengthening of the capacity in public bodies to manage FOI requests effectively and efficiently.

2.1.3 In view of the proposed removal of the application fee, the Minister will not be proceeding with the Committee Stage amendment to introduce a single application fee for each separate and unrelated FOI request submitted as part of a multi-faceted FOI request;

2.1.4 it is planned that the final Code of Practice for FOI once approved by Government will be introduced in tandem with the commencement of the Freedom of Information Bill 2013 following its enactment by the Oireachtas.

3. Background/Reason for Memorandum

FOI Fees

3.1 An up-front application fee of €15 was introduced in 2003 in respect of all non-personal FOI requests, essentially to reduce the volume of requests, in particular from very frequent users of FOI legislation, including journalists.

3.2 The original legislation in 1997 contained provisions to refuse an FOI request on administrative grounds if it gave rise to excessive administrative burden for the body processing the request. In addition search, retrieval and copying (SRC) fees were provided for and levied at €20.95 per hour in respect of the cost of public servants' time in searching for and retrieving records falling within the scope of an FOI request that are ultimately released. The SRC fees, in respect of which a deposit could be requested, were intended to ensure that the legislation was not misused by imposing a cost on requesters, particularly where requests constitute 'trawls' of records that are not targeted on the specific records and information that the requester is seeking.

3.3 In seeking Government approval for the publication of the General Scheme of the FOI Bill in July 2012, the Minister proposed the retention of the upfront application fee for FOI in essence on the basis of his concern that its removal would result in a substantial increase in the volume of FOI requests generating a large additional administrative burden on public bodies that would adversely affect the operation of Ireland's FOI regime. The Minister maintained this approach in the published FOI Bill in July 2013. At Committee Stage for the Bill the Minister acknowledged that, in principle, the removal of the FOI application fee was strongly consistent with the Government's commitment to securing substantially greater openness, transparency and accountability of public administration.

3.4 The Minister is now proposing to revise his original approach in relation to FOI fees through the abolition of the application fee for non-personal FOI requests set by Order under the Bill. Application fees for internal review and appeal to the Information Commissioner will be retained. The Government previously agreed in July 2012 to reduce the internal review fee to €30 (from its current level of €75) and to reduce the fee for appeal to the Information Commissioner to €50 (from €150). The assessment informing the Minister's decision to propose the removal of the FOI application fee is summarised in Para 4 below.

Report Stage Amendments (general and fees matters)

3.5 Government approval is necessary for certain amendments to the FOI Bill to be proposed by the Minister at Report Stage. The specific amendments which the Minister proposes to make in relation to general FOI matters are set out in paragraph 5 and those in relation to FOI fees are set out in paragraph 6.

Code of Practice and Review of FOI

3.6 On 24 July, 2012 (S180/20/10/0569D), the Government in its decision on the FOI General Scheme sought the development of a Code of Practice, in tandem with the drafting of the Bill, to support the implementation of FOI in public bodies. On the basis of the Government Decision, a focused, targeted and time-bound review of the operation of FOI was commenced by the Department of Public Expenditure and Reform to determine the measures that would be expected to improve the effectiveness and efficiency of Ireland's FOI regime, culminating in the development of the Code of Practice for FOI which is accompanying this Memorandum.

4. Assessment of FOI Fees Issue

4.1 The Minister's analysis is that, if the SRC fee regime was effectively applied by public bodies, it could achieve the same effect in discouraging the misuse of FOI as originally envisaged under the FOI legislation. However, the use of SRC fees has essentially fallen into disuse other than for very large or complex requests. Information recently collated by the Minister's Department from public bodies established that SRC fees are rarely used (i.e. in about 5 per cent of non-personal requests) and where they are used, they are applied on an ad-hoc and inconsistent manner. In some cases, it seems that deposits for SRC are being sought by public bodies for what seem excessive charges to discourage requests from proceeding. Moreover, the widespread adoption of the practice of making multifaceted FOI requests where multiple, unrelated requests are made on payment of a single fee has significantly eroded the impact of the application fee in discouraging FOI requests by journalists.

4.2 The case for the retention of the application fee is difficult to sustain in circumstances that, not only is the total level of application fees – €59,166.35 in 2012 – such that it essentially makes no contribution to offsetting the administrative cost of FOI but that the revenue accruing from the fee is offset to a large extent by the administrative cost of its collection. The role of FOI in ensuring openness and transparency in public administration and the fact that FOI has disclosed inefficiencies and waste in the use of public funds is likely, in objective terms, to represent a substantial offset to the total administrative cost of FOI. The retention of FOI application fees also appears anomalous in light of the Government's stated intention to participate in the Open Government Partnership and to promote Open Data.

4.3 Internationally, Ireland is an outlier in levying an application fee for FOI. Ireland is unique within the EU (for those countries that have FOI regimes) and one of only four OECD countries in charging an application fee. The policy paper accompanying this Memorandum sets out the outcome of recent reports of FOI charges carried out in Australia and the UK which highlight that:-

- FOI gives rise to significant administrative costs for public bodies;

- while it is appropriate to apply charges for processing particular types of requests, an application fee for non-personal FOI requests is not consistent with the fundamental objectives and goals of FOI;
- FOI fees set at a level aiming to achieve significant cost recovery are not feasible;
- the administrative cost of processing low levels of FOI fees can exceed the amount collected;
- in assessing the administrative cost of FOI, account must be taken of the savings achieved and potential waste of public expenditure avoided through the discipline, efficiency and accountability promoted by FOI; and
- there are a number of practical options available to seek to reduce the administrative cost of FOI for public bodies.

4.4 The Minister's proposed reforms to FOI fees, therefore, reflect elements of good practice in other jurisdictions such as Australia and the UK including the setting of caps on SRC fees, providing some SRC time free of charge and the proposed provision of information in simple administrative form outside of FOI, through more proactive publication of information and Open Data policies as well as other access regimes (i.e. Access to Environmental Information, EU Re-use of Public Sector Information Directive).

4.5 Having carefully examined the issue, the Minister believes that the administrative burden for FOI in an environment in which the €15 application fee is removed would not become excessive in circumstances that public bodies:-

- use the powers provided under FOI legislation appropriately to refuse requests on administrative grounds. Those grounds are being strengthened in the current Bill to allow a request to be refused on the basis of the impact it has on the functional area of a public body rather than on the organisation as a whole, as is currently the case;
- apply SRC in a consistent and systematic manner (including the charging of deposits) in line with the principles included in the proposed Code of Practice for FOI for large requests (i.e. those that require in excess of five hours of search and retrieval time) that are often not focused or targeted and therefore give rise to a substantial administrative burden; and
- proactively publish information including that which is frequently the subject of FOI requests under departmental publication schemes and adopt Open Data policies in due course.

5. Report Stage Amendments of FOI Bill 2013 (General Matters)

Details of the Report Stage amendments for which the Minister is now seeking the approval of Government, other than those relating to FOI fees, are set out in Appendix I to this Memorandum. The latest draft Amendments document from the Office of the Parliamentary Counsel (OPC) is at Appendix VI for reference. A brief summary of the main amendments is set out below with a reference to the relevant OPC amendment text in brackets:

- (i) an exemption for child abuse bodies other than in relation to their administrative records (Amendments Nos 32 (part) & 37);
- (ii) the correction of an anomaly so that records of the Office of the Information Commissioner in respect of reviews under the European Communities (Access to Information on the Environment) Regulations 2007 are exempt from FOI (Amendments Nos 29, 30, 31, 32 (part) & 35 (part));
- (iii) an exemption for the Revenue Commissioners in relation to certain records relating to Section 811 of Taxes Consolidation Act 1997 (to guard against tax avoidance) (Amendment No 36);
- (iv) an exemption for the Data Protection Commissioner, other than in relation to administrative records, pending the introduction of legislative changes being proposed in this area at EU level (Amendment No 34 (part));
- (v) the provision of an exemption for the Central Bank in respect of records relating to the Credit Register to be established under the Credit Reporting Act 2013 (Amendment No 32 (part));
- (vi) an amendment to ensure that the Bus Eireann school transport services carried out on behalf of the Department of Education and Skills will be subject to FOI under the new legislation (Amendment No 11);
- (vii) an amendment, yet to be drafted, is proposed to provide that the energy network companies, ESB Networks, Ervia and Eirgrid will be subject to FOI under the Bill (Amendment not yet drafted);
- (viii) an amendment, yet to be drafted, is proposed to bring about certainty that all of the information which public bodies are currently required to publish under Sections 15 and 16 of the 1997 Act will require to be included in the publication schemes provided for in Section 8 of this Bill (Amendment not yet drafted).
- (ix) miscellaneous amendments (mainly technical), many arising from Committee Stage in the Dáil (see details in Appendix I).

6. Report Stage Amendments of FOI Bill 2013 (Fees Matters)

6.1 The amendments proposed by the Minister in relation to FOI fees are set out below and are reflected in Amendments Nos 24 and 25 of the OPC Amendments document at Appendix VI. The actual monetary amounts will be set by way of Ministerial Order under the Bill when enacted:

- Abolition of the €15 application fee;

- Introduction of a cap on the amount of SRC fees that can be charged at €500 (25 hours approx.);
- Introduction of a further upper limit on estimated SRC fees at €700 (35 hours) above which an FOI body could refuse to process a request (or if the requester agreed, the request could be processed with full SRC fees applying without limit);
- Introduction of a minimum threshold of €100 (5 hours) below which no SRC fees would be charged for records actually released; but if SRC on records actually released was above this level the full cost of SRC would apply subject to the cap of €500.
- Retention of the provisions relating to the seeking of a deposit;
- Introduction of a definition in the Bill to ensure that there is clarity on the activities for which SRC fees can be applied which includes all activities carried out leading up to the finalisation of a file containing the records for review by the decision-maker prior to release.
- Multi-faceted requests will be addressed through the power in the Act to refuse requests on administrative grounds;
- The reduction in costs for internal reviews and appeals to the Information Commissioner had been agreed by the Government from the outset.

6.2 Search Retrieval & Copying (SRC) fees

6.2.1 The Government had previously agreed that a cap of €500 be put in place as a maximum above which no SRC fee would be charged and that a request where the estimated cost would exceed that cap could be refused by the FOI body. The Minister proposes to retain the cap of €500 above which no SRC fees would be charged to ensure that such costs are reasonable, to promote more consistent application and to promote focusing and targeting of FOI requests.

6.2.2 The Minister also proposes to introduce a higher limit to provide that where the estimated total SRC fees would exceed a higher cap - €700 (35 hours approx.), the FOI request could be refused. This is to discourage trawls of records with nothing specific in mind but which can be extremely time consuming to process and to encourage instead more focused and specific FOI requests. If the FOI body decided to process such a request and the requester agreed, full SRC charges would be levied.

6.2.3 The Government had already agreed to a minimum threshold amounting to two hours of search and retrieval time (approx. €40) below which no SRC fee would be charged. It is proposed to increase the minimum threshold to €100 (approx. 5 hours) with full SRC fees being applied to requests that involve more than 5 hours search and retrieval time. The threshold of €100 applies to the cost of SRC time spent on records actually released rather than the total SRC time spent on the FOI request, which is likely to be higher as all records

that are retrieved may not be released. Research undertaken by the Minister's Department (based on 2,460 FOI requests over the first three quarters of last year) showed that setting the threshold at this level would result in many requests no longer incurring the charge. The purpose of this measure is to encourage the focusing and targeting of FOI requests as requesters will be encouraged to seek information without having to pay any charge.

6.3 Multifaceted requests

6.3.1 The Minister does not now propose to proceed with the amendment approved by Government for Committee Stage to charge a single application fee for every separate and distinct request submitted as part of a multi-faceted FOI request on the basis that he is now proposing to remove the application fee and also in light of the recommendation of the External Review Group on FOI and the advice of the Office of the Attorney General that multi-faceted requests (which are likely to be voluminous) can and should be dealt with under section 15 of the Bill which provides for the refusal of requests on administrative grounds, (e.g. that the request is likely to cause a substantial and unreasonable interference with or disruption of work or that it is frivolous or vexatious).

6.3.2 The proposed reforms to FOI fees and the proposed removal of the application fee are expected to strongly complement the whole thrust of the FOI reform legislation and other key initiatives such as the Open Government Partnership, Open Data and the planned revision of Re-use of Public Sector Information legislation to significantly increase the volume of official information made available to citizens. In addition, the move to publication schemes, encouraging public bodies to publish as much as possible outside of FOI and publication of FOI disclosure logs will mean that much more information is available in the public domain and there should be less of a need for requesters to resort to FOI in the future.

7. Code of Practice for FOI and Review of FOI

7.1 The review focused on ensuring the achievement of the key objectives of the FOI Act i.e. to enable members of the public to obtain access to the greatest extent possible consistent with the public interest and the right to privacy to information in the possession of public bodies. Recommendations made by the Public Bodies Review Group and the External Review Group, some of which were also made by the Committee for Finance, Public Expenditure and Reform included ensuring:-

- effective structures, supports and resources are in place in public bodies to support the implementation of FOI in line with best practice;
- a strong, expert leadership role exercised by the FOI Central Policy Unit (CPU) in the Department of Public Expenditure and Reform to guide, support, provide knowledge and expertise to ensure the effective and efficient operation of FOI;
- clear guidance and training is available to public bodies
- that the pro-active publication of information outside of FOI was adopted as standard practice.

7.2 The attached draft Code, comprising 10 principal sections, seeks to address the findings of the review process. It seeks to promote best practice and guide and inform the performance of public bodies in relation to the operation of FOI, ensuring that requests are dealt with in an efficient, consistent and standardised manner.

7.3 The draft Code was originally circulated with a draft Memorandum on 22 October 2013 but was not subsequently submitted to Government as further amendments to the FOI Bill were required which needed to be reflected in the draft Code. Amendments have been made to the text of the draft Code previously circulated to reflect the observations of his Ministerial colleagues as well as the proposed amendments to the Bill where appropriate (these are principally in sections 6, 7 and 8 in the revised draft Code attached at Appendix IV). The full observations submitted by Ministers at the time and responses are at Appendix VI.

7.4 As set out above, a key finding is the need to enhance compliance by public bodies of FOI obligations. A number of features of the Code specifically contribute to this objective as well as to reducing the administrative burden including:

- The support which will be provided by a strengthened, reinvigorated Central Policy Unit (CPU) guiding, informing and advising public bodies on key FOI policy issues;
- The robust support infrastructure which will be provided by renewed/refreshed networks;
- The key benefits to be gained from ensuring good practice in records management which is at the heart of the FOI challenge and proactive publication of information which should help reduce the FOI burden;
- The Code is supported by detailed manuals on processing of requests, guidance notes on specific complex issues and advices from the Office of the Attorney General. Further guidance will be developed as appropriate on for example linkages with data protection, publication schemes, records management etc;
- Clarification of the grounds to allow refusal of requests on the grounds of being vexatious, frivolous or voluminous (including multi-faceted requests) or in cases where records are already in the public domain or will be shortly and where records could be accessed under alternative access regimes. This will complement the strengthening of provisions in the Bill allowing requests to be refused on administrative grounds;

These measures will complement the promotion of focused and targeted FOI requests achieved through changes in the FOI fees regime. Further detail on the review of FOI and the draft Code in summary form are at Appendix VII, while the draft Code in full is at Appendix IV.

8. Public Announcement

8.1 The Minister proposes to issue a Press Release setting out the Government Decision to publish the draft Code of Practice and the External Review Group report.

9. Impacts

9.1 As indicated in the Regulatory Impact Analysis (RIA), any administrative implications of the implementation of the proposals need to be met from within approved financial and human resources. Implementation of the Code should improve efficient handling of requests and reduce the administrative burden.

9.2 The proposed reforms of FOI fees will lead to a reduction in the total amount of FOI fees collected at least initially compared to the charges currently in force. However, the use of SRC fees consistently across the system for larger requests should offset the loss in revenue from FOI application fees which in any event is not material in overall Exchequer terms.

9.3 The removal of FOI application fees and the resulting increased level of requests has, in principle, the potential to create a significant additional administrative burden on public bodies. The Minister's assessment is that whether this potential actually materialises in practice depends to a substantial extent on the manner in which public bodies operate FOI efficiently and use the FOI legislation effectively. The Code of Practice for FOI, highlights a broad range of actions which public bodies could take to reduce the administrative burden of FOI. Many of these actions related simply to the need to ensure that staff are appropriately trained in dealing with FOI requests, have expert support, advice and assistance available to them from the FOI Units in their organisations and that the role of the Central Policy Unit in providing a detailed governing framework for FOI bodies is reanimated.

9.4 The Minister's assessment is that against the backdrop of the opportunities provided by the proposed legislative changes to incentivise targeted and focused FOI requests, current weaknesses and difficulties in the operation of FOI - which underpinned the Government's Decision that a Code should be developed – as well as the administrative burden can be addressed by strengthening the capacity of FOI Units in public bodies in line with the relevant provisions of the Code. This does not necessarily require additional resources to be allocated to FOI but rather by ensuring in summary that:-

- FOI Units are sufficiently skilled and expert in FOI;
- Decision-makers are trained;
- FOI processes are well designed;
- FOI and good practice guidance is followed; and
- the FOI system in public bodies is adequately prioritised and supported by senior management

9.5 No material impacts have been identified from these proposals for North-South, East-West Relations, Employment, Gender Equality, Poverty or Social Exclusion, People with Disabilities, Industry Costs, and Rural Communities.

Appendix I

1. Child Abuse Bodies

- (i) Commission to Inquire into Child Abuse (CICA);
- (ii) Residential Institutions Redress Board (RIRB);
- (iii) Residential Institutions Redress Review Committee (RIRRC).

The Department of Education and Skills (DES) has requested that the above bodies be provided with a full exemption from FOI. The Minister considered that it would be difficult to justify exempting the administrative records of those bodies from FOI. Legal advice received from the AG in this matter raised no legal difficulties in making these bodies subject to FOI in relation to their administrative records. The exemption proposed for these bodies will be similar to that applying to the Office of the Attorney General, the Director of Public Prosecutions and others. (Amendments Nos 32 (part) & 37)

2. Office of the Information Commissioner (OIC)/Commissioner for Environmental Information

FOI does not apply to records relating to reviews conducted by the OIC under the FOI Act (other than in relation to administrative records). There is no similar exemption in relation to reviews conducted by the OIC under the European Communities (Access to Information on the Environment) Regulations 2007. The OIC has sought that this anomaly be addressed by providing an exemption to the OIC in respect of the records it holds in relation to both types of review, although records relating to general administration will remain subject to FOI. The Minister is proposing that this exemption be granted to ensure consistency of approach. (Amendments Nos 29, 30, 31, 32 (part) & 35 (part))

3. Revenue Commissioners – Tax Avoidance

The Memo for Government relating to Committee Stage Amendments to the FOI Bill considered at the Government Meeting of 5 November 2013 mentioned, in the context of the Minister's response to the observations of the Minister for Finance, that an amendment proposed on behalf of the Revenue Commissioners would be considered in further consultation with the Minister for Finance. Following those consultations, the Minister has decided to accept the proposal by the Revenue Commissioners that records relating to the formation of an opinion under Section 811 of the Taxes Consolidation Act 1997 that a transaction is a tax avoidance transaction should be exempt from FOI. (Amendment No 36)

4. Data Protection Commissioner

The Minister has accepted a case made by the Department of Justice and Equality on behalf of the Data Protection Commissioner to provide an exemption from FOI in Schedule 1 Part 1 of the Bill for records of the Data Protection Commissioner, other than in relation to its administrative records. The case made by D/J&E is that Data Protection legislation is currently under review at EU level and that it would be preferable to consider the public policy issues which arise in the context of balancing any right of access to personal data held by public bodies with the right to the protection of personal data in the light of the legislative changes made. The DPC has a particular concern regarding records relating to its investigation, audit and advice functions. Having examined the matter further, it does not appear to be legally feasible to limit the exemption applying to the DPC to these functions.

The exemption will, therefore, apply to all DPC records other than those related to its administrative functions. Bringing the DPC within the scope of the FOI legislation - albeit on a relatively limited basis – represents a further extension in the coverage of FOI.
(Amendments No 34 (part))

5. Central Bank in relation to certain records relating to the Central Credit Register

The Credit Reporting Act 2013 which provides for the establishment, maintenance and operation of a Central Credit Register by the Central Bank of Ireland was enacted in 2013. When the Credit Register is established it will contain records of virtually all borrowings and repayments of the entire population of the State. The credit histories relating to individuals and persons who are licensed or regulated by the Central Bank will be covered under the existing Central Bank exemptions in the FOI Bill. Companies which are not regulated (Dunnes Stores and Ryanair were provided as examples) would, however, be subject to consideration for release under FOI. The Department of Finance sought an exemption for records held by the Central Bank in relation to the Credit Register and the Minister has agreed to propose it at Report Stage, as confidential personal information relating to an individual's financial affairs should not be subject to release under FOI. (Amendment No 32 (part))

6. Section 11(9) in relation to Bus Eireann and School Transport

As agreed by Government in July 2012, Section 11(9) effectively repeals a provision in the FOI Act 2003 which limited the potential for access to records relating to services provided under a contract for services to a public body, by a commercial State body or some private bodies, thereby restoring the original 1997 provision. Following enactment of this provision, therefore, a body that is not an FOI body but is providing a service for an FOI body under a contract for services will be subject to FOI in respect of the service it provides to the FOI body.

The provision was intended to cover Bus Eireann's school transport operations. However in light of the High Court Judgment [2012] IEHC 425 by Mr Justice Brian J McGovern of 23/10/12, the question arose as to whether the Bus Eireann school transport operations would in fact be covered by the provision, due to his finding that the arrangement between the Department of Education and Skills and Bus Eireann was "an administrative arrangement" and not a contract between the Department and Bus Eireann within the meaning of Council Directive 2004/18/EC relating to public service contracts and the European Communities (Award of Public Authorities' Contracts) Regulations 2006. The Minister proposes to amend the definition of service provider in Section 2 to ensure that Bus Eireann's school transport operations will be subject to FOI. (Amendment No 11)

7. Energy Network Companies

The Minister has been discussing with his colleagues the possibility of making State companies which operate as monopolies subject to FOI under the Bill. In that regard, Ministers will be aware of the speech made by Minister Pat Rabbitte on 29 May which addressed this issue and concluded that it would be appropriate for FOI to apply to the energy network companies, ESB, Ervia and Eirgrid. The Minister welcomes Minister Rabbitte's support in this matter and proposes to ask the Office of the Parliamentary Counsel to engage with his officials and officials of the Department of Communications Energy and Natural Resources to agree the necessary wording for an amendment to the Bill at Report Stage to ensure that these energy network companies will be subject to FOI under the Bill. In common with all new bodies that

are to become subject to FOI under this Bill for the first time, a period of six months will be allowed for these companies to make the necessary preparations. (Amendment not yet drafted)

8. Section 8 – Publication Schemes

Section 8 of the Bill provides for the introduction of Publication Schemes to replace the Section 15 and 16 manuals that exist under the 1997 Act. Publication Schemes are regarded as good practice in FOI in other jurisdictions as a means of disseminating information relating to functions and activities of public bodies. There has, however, been a misconception in some quarters that less information will be made available by public bodies under the Publication Schemes than under the Section 15 and 16 manuals. There has also been a suggestion that public bodies will be able to decide for themselves what might be included in such schemes. In order to bring about certainty in this area, the Minister has decided to request the Office of the Parliamentary Counsel to draft an amendment to the Bill to make it clear that all of the information which public bodies are required to include in their Section 15 and 16 manuals will now be provided in the publication schemes under Section 8. (Amendment not yet drafted)

9. Other Report Stage Amendments on general FOI matters

A necessity for certain amendments came to light on foot of and following the debate at Committee Stage of the Bill in the Dail. The main details are set out below.

- Certain amendments are being made to the Bill to ensure that any changes to be made by the Minister in the future by Order in terms of adjusting the FOI status of bodies that are subject to FOI under the Act (under Section 6(7)) or making a new body exempt from FOI (under Section 6(3)) or making an order in relation to a prescribed body (under Section 7) would require a positive resolution by both Houses of the Oireachtas. (Amendments Nos 12, 20 (part) & 21 (part));
- Provisions in relation to commencement are being amended as follows:
 - (i) to ensure that a commencement date is provided in respect of every circumstance in which a body might be made subject to FOI under the Bill, either following enactment or in the future;
 - (ii) the proposed commencement provisions are being re-located to more appropriate positions e.g. the commencement provision in relation to prescribed bodies has been moved to Section 7.(Amendments Nos 4, 5, 19 (part), 20 (part) & 21 (part))
- The definition of “effective date” in Section 2 is being amended to clarify under which Section of the Bill the necessary orders will be made and to make other technical changes in relation to effective dates (Amendments Nos 8 & 9);
- In Section 2, the definition of what does not constitute personal information is being broadened so that certain information contained in the definition will be made available under FOI in respect of any individual who holds or held any office or any position in an FOI body remunerated from public funds, rather than just in respect of a director or member of staff as at present (Amendment No 10);
- An amendment is being proposed to the definition of public body in Section 6(1)(c) to make it clear that the definition includes a body established or appointed by the Government or a Minister **other than a body established under the Companies Acts.**

The purpose of this amendment is to avoid commercial entities created under the Companies Acts being inadvertently included under FOI. Legal advice suggests that this risk of inadvertent inclusion arises because of the formula of words, explicitly excluding entities established under the Companies Acts in paragraph (b) of section 6(1), suggests that by not being explicitly excluded under paragraph (c) might suggest, on a literal interpretation, that they are included for the purposes of FOI (Amendment No 15).

- On foot of a suggestion by Deputy McDonald, an amendment is being proposed to provide that Section 8 (publication schemes) will come into effect not later than 12 months following enactment of the Bill. (Amendment No 6);

Another amendment which is to be proposed at Report Stage but which has already been approved by Government for Committee Stage relates to an amendment to Section 6(1) to provide that where a body is exempt or part-exempt under Schedule 1 of the FOI Bill, any subsidiary of that body, or body controlled directly or indirectly by that body is exempt from FOI on the same basis as the parent body itself. Consequential amendments providing for subsidiaries etc are also being proposed. (Amendments Nos 14, 16, 17 & 19 (part))

Freedom of Information Bill, 2013

**Proposals for
Reform of FOI Fees**

**FOI Central Policy Unit
Department of Public Expenditure and Reform
June 2014**

TABLE OF CONTENTS

1. PURPOSE OF PAPER	1
2. INTRODUCTION TO FOI FEES	2
3. BACKGROUND TO FOI FEES	3
4. INTERNATIONAL POSITION – FOI FEES	4
5. REVIEW OF FOI FEES BY GOVERNMENT – JULY 2012 AND JULY 2013	5
6. PROPOSED REDUCTIONS IN INTERNAL REVIEW, APPEAL AND SRC FEES	7
7. ASSESSMENT	8
8. PROPOSALS FOR REFORM OF FOI FEES REGIME	10
9. MULTIDACETED REQUESTS	13
10. CONCLUSIONS	15
ANNEX 1 – RESEARCH ON FOI FEES	16
ANNEX 2 – PROJECTED REDUCTIONS IN FOI FEES	22

1. Purpose of Paper

1.1 This paper:-

- outlines the current FOI fees regime in Ireland;
- sets out the background to the issue of FOI fees;
- summarises the international position in relation to FOI fees;
- examines the case for the reform of FOI fees; and
- sets out the Minister's proposals on FOI fees which will be introduced at Report Stage of the FOI Bill in the Dáil.

2. Introduction to FOI Fees

2.1 FOI fees in Ireland currently essentially comprise:-

- The ‘upfront’ €15 application fee introduced in 2003 payable only in respect of non-personal FOI requests (which comprise about 3 in 10 FOI requests); and
- Search, retrieval and copying (SRC) fees provided for in the original 1997 legislation and levied at €20.95 per hour in respect of the cost of public servants’ time in search for and retrieval of records falling within the scope of an FOI request that are ultimately released. SRC fees are not charged for records that are withheld;
- The €75 fee for an internal review and the €150 fee for an appeal to the Information Commissioner

2.2 SRC fees cannot be charged either for the time expended that relates to records that are found to be exempt from release or for the time spent in deciding what records falling within the scope of an FOI request are eligible for release under the Act. The current hourly SRC fee is estimated by the Central Economic and Evaluation Services in the Department of Public Expenditure and Reform to underestimate the cost of a public servants’ time by approximately 50%.

2.3 The average total level of FOI fees payable in respect of a non-personal FOI request was €21.59 in 2011 comprising the application fee of €15 and the average level of SRC fees paid of €6.59. The average amount of search and retrieval time charged amounted to less than 20 minutes.

2.4 This average total amount comprises less than 5% of the average estimated administrative cost of €600 in the total cost of dealing with a FOI request when account is taken of the full cost of a public servants’ time as well as the time spent in deciding on the request, in addition to the time spent searching for and retrieving the records that are the subject of the request. The estimate based on survey data for 2010 relates to both personal and non-personal requests; the average total cost of a non-personal request, which are in general more complex, is therefore likely to be substantially higher. No application fee or SRC fees apply for personal FOI requests, except in exceptional circumstances.

2.5 Two key conclusions can be drawn:-

2.5.1 Non-personal FOI requests give rise to significant administrative costs across the public service as a whole. A large increase in the number of non-personal requests would lead to a substantial increase in these administrative costs which could impact adversely on the capacity of the public bodies to carry out other statutory responsibilities.

2.5.2 FOI fees do not accurately reflect the overall administrative cost of dealing with requests. However, a very substantial increase in the overall level of FOI fees would be required to recoup a meaningful proportion of the total administrative cost for non-personal requests. For example, a 30% cost recovery target would require a large increase in FOI fees for the average non-personal request amounting to approximately €180.

3. Background to FOI Fees

3.1 At the time that SRC fees were initially put in place under the original 1997 FOI legislation, it was envisaged, as illustrated in the debate in the Oireachtas at the time, that these charges would only arise in cases where a person was looking for a substantial volume of material that created a significant administrative burden in a well organised office. In such cases it was believed that the requester should pay such fees because their request would disrupt the daily business of that office impacting adversely on the services provided by that office to the public. SRC fees therefore recognised the opportunity cost of public servants' time when responding to FOI requests.

3.2 The 2003 legislation maintained the SRC fees provided for in the original legislation but amended the legislation in relation to fees to permit the Minister for Finance to prescribe a fee to be charged by a public body in respect of a request for access to non-personal records. The amending legislation provided for the 'upfront' application fee on the basis that:-

- There was a very significant administrative cost to Freedom of Information that should be recognised, which in some cases could be significant and was borne by taxpayers generally;
- The provisions for the charging of (search and retrieval) fees in the original Act had not operated as was originally intended;
- The absence of any application fee facilitated 'trawls' through the records of Government Departments, often by journalists, which was not in keeping with the original objective and spirit of the Act, had little or no public benefit and diverted administrative resources away from other priorities.

3.3 The main arguments put forward in favour of the introduction of the application fee for non-personal FOI requests at the time, therefore, related to requiring some notional contribution towards the administrative cost of FOI and to deter misuse of the legislation in light of the negative consequences on the ability of the relevant public bodies to carry out their work on account of the volume of FOI requests.

3.4 The introduction of an application fee for non-personal FOI requests was represented as requiring requesters to focus and target requests for information under the Act. The level of €15 at which the application fee was set was described as striking a balance between the significant cost of administering the legislation and the objective of facilitating access by the public to official information.

3.5 In conclusion, the upfront application fee was introduced in 2003 essentially for the same reason as underpinned the inclusion of SRC fees in the original 1997 legislation. No assessment appears to have been carried out at the time to assess why SRC fees had not succeeded in promoting targeted and focused FOI requests and in discouraging misuse of FOI. In addition, the effect of introducing an upfront application fee in discouraging FOI requests that were in the public interest does not appear to be factored into the analysis of costs and benefits of FOI.

4. International Position – FOI Fees

4.1 International analysis highlights that controversy regarding FOI fees is ubiquitous. The principle is universally accepted that where FOI fees are applied they should not discourage requests for access to official information. Practically all FOI type legislation provides for the ability to levy some charges for locating and/or reproducing records but there is wide diversity between the approaches adopted in different national FOI laws.

4.2 FOI fees – usually but not exclusively in the form of search and retrieval fees – are a common feature of FOI regimes internationally. According to the Global Right to Information Rating www.rti-rating.org all 33 of 34 OECD countries which have FOI type legislation in place, provide for the charging of some FOI fees even if in some instances these are restricted to the cost of reproduction. 18 OECD countries, including Ireland, charge search and retrieval fees but only 3 others charge application fees for FOI (i.e. Canada, Japan and Israel). A wider group of 15 countries¹ out of the 95 countries worldwide included in the ratings charge application fees. While a small number of jurisdictions charge no fees for FOI whatsoever, an entirely free FOI regime tends to be the exception rather than the rule internationally. Details of the international position on FOI fees in a number of countries is attached as Annex 1 to this paper.

4.3 The question of FOI fees and charges have been examined in a number of countries, for example in the UK and Australia. A number of issues highlighted in those reviews are briefly summarised below given their relevance for the examination of the position in Ireland and the development of proposals for reform.

4.4 Australian Review of FOI Fees.

4.4.1 In the February 2012 report *A Review of Charges under the Freedom of Information Act, 1982* the Australian Information Commissioner focussed on the objectives for FOI of promoting greater transparency in government by providing the community with access to government information to support accountable and responsive government. The review highlighted the following issues in particular:

- FOI requests can impose a substantial administrative burden on agencies. While the previous (2010) reforms of FOI fees which in particular abolished an FOI application fee of AU\$30 (€20.40) were successful in delivering low cost access to information for applicants, they also created challenges for agencies in managing increased workloads. Some agencies reported higher costs of processing because the number or complexity of applications had increased. This raised questions about the appropriateness of diverting resources from other key areas to process FOI requests.
- Fees and charges should not be used to discourage applicants from exercising their rights under FOI, nor as a mechanism to seek full cost recovery or to generate revenue for agencies.
- It is appropriate for users to make some contribution to the costs of processing applications as in many cases the costs of processing individual requests can be substantive. Costs should be set at an appropriate level to reflect the type of information sought and the resources of the applicant. An appropriate fees level assists

¹ Canada, China, India, Israel, Japan, Nepal, Pakistan, Tajikistan, Uganda, Uzbekistan, Zimbabwe, Saint Vincent and the Grenadines, South Africa and Taiwan.

in providing a disincentive for unmeritorious or repeat applications and streamlining large or complex requests.

4.4.2 Key recommendations included in the Information Commissioner's review included that:

- agencies should be encouraged to establish administrative schemes to allow people to request information outside the FOI Act and if an agency establishes such a scheme and a person makes a FOI request without first applying under the scheme, a \$50 FOI application fee should apply to both personal and non-personal requests;
- FOI charges for non-personal requests should apply at the same flat rate to all processing activities (search, retrieval, decision-making, redaction and electronic processing); processing time of more than five hours, but less than ten hours should be charged at a flat rate of AUS\$50 (€34 approx.). Processing in excess of ten hours should be charged at AUS\$30 (€20.40 approx.) per hour;
- an agency should have the discretion to refuse to process a request that is estimated to take more than 40 hours to process whether personal or non-personal.

4.4.3 The response to these recommendations was published in the July 2013 statutory review of FOI and Information Commissioner legislation for the Attorney-General. The report concurred that the administration of FOI represents a significant cost and resource commitment and that a key challenge is to adopt and maintain practices to process FOI requests effectively and efficiently within their resources. While the review acknowledged the desirability of encouraging the use of administrative access schemes, it did not, however, recommend that this should be done by the reintroduction of application fees for FOI requests.

4.4.4 The review endorsed the recommendation regarding the introduction of a 40 hour processing time ceiling for FOI. It also endorsed the recommendation that a flat rate processing charge should apply to all processing activities but recommended that no charge should be payable for the first five hours of processing time, processing time that exceeds five hours but is ten hours or less should be charged at a flat rate of AUS\$50 (€34 approx.) and that the charge for each hour of processing time after the first ten hours should be AUS\$30 (€20.40 approx.) per hour.

4.5 UK Reviews of FOI Fees

4.5.1 The UK FOI Act 2000 provides that public authorities can either charge for or decline requests for information that would cost a public authority either more than £600 (€740 approx.) for central government or £450 (€560 approx.) for other public authorities to deal with the request. This is referred to in the UK legislation as the appropriate limit.

4.5.2 In calculating whether the cost limit would be exceeded by complying with a request, a public authority may, under the regulations, only factor in the costs involved in determining whether it holds the information, locating the information, retrieving the information and extracting the information. This translates as 24 and 18 hours respectively based on a standard charge of £25 per hour (€31) regardless of the actual cost of the staff time taken.

4.5.3 In 2006 Frontier Economics in a report on the impact of FOI commissioned on behalf of the UK Department of Constitutional Affairs recommended:

- that consideration be given to including reading, consideration and consultation time within the scope of calculating the appropriate limit;
- an increase in the standard charge from €25 to £34 per hour for central government on the basis that it was a more representative cost.
- examination of a targeted fee for commercial, media or repeat FOI requesters.

The Constitutional Affairs Committee disagreed with the report's conclusions on the basis that sufficient weight was not afforded by the report to the public interests in access to information or to the wider benefits of FOI and no changes were subsequently made in FOI fees.

4.5.4 In December 2011, the UK Ministry of Justice submitted a Memorandum to the Justice Select Committee for the Post-Legislative Assessment of the UK FOI legislation. The Memorandum highlighted a number of issues including whether the FOI regime struck the right balance between the Government's commitment to transparency and its commitment to reduce regulatory burdens. FOI has had an impact on resources and the cost to public authorities, with some requests resulting in significant cost. The appropriate cost limit is largely viewed as inappropriate by public authorities who feel either that the limit is too high or that the range of activities which can be included in its calculation are not comprehensive enough.

4.5.5 The Justice Committee's report found that complying with its duties under the Act can be a significant cost to a public body, but it also creates savings which accrue from the disclosure of inappropriate use of public funds or, more importantly, fear of such disclosure. It also indicated that a two hour decrease in the 18 hour appropriate limit may be justifiable. The Committee recognised that while there is an economic argument in favour of FOI being significantly or wholly self-funding, fees at a level high enough to recoup costs would deter requests with a strong public interest and would defeat the purposes of the Act, while fees introduced for commercial and media organisations could be circumvented.

4.5.6 The Government's response to the Committee's report published by the Department of Justice in November 2012 largely agreed with the Select Committee's recommendations recognising that any consideration of the burdens of FOI must also take adequate account of the benefits, both tangible and intangible, rendered through the Act.

4.5.7 The report concluded that:-

- Targeted charging would be difficult and burdensome to enforce and police.
- Charging for FOI requests would have an adverse impact on transparency and would undermine the objectives of the Act. A charge would be expensive to administer and may result in increasing, rather than reducing, burdens on public authorities particularly if it were a nominal charge rather than a much higher full cost recovery fee.
- The report also highlighted that the economic situation and increased pressure on the budgets of public authorities means that the Government must also consider how best to reduce the burden of FOI where it can do so without undermining

transparency.

- It also stressed that there are other, non-legislative means of improving the operation of FOI within public authorities and improving the efficiency of handling FOI requests, thereby reducing the burdens
- Efforts to reduce burdens should be focused on those who impose disproportionate burdens on public authorities by making what may be considered as ‘industrial’ use of the Act.
- Options for providing that time taken to consider and redact information can be included in reaching the cost limit would be explored as will other options to reduce the burden on public authorities in relation to the cost limit including the possibility of reducing the current overall limits of £600 and £450.

4.6 Conclusions

As can be seen from the above examples, fees are a controversial issue in other jurisdictions. Some key conclusions that are relevant to Ireland’s situation are that:

- processing of FOI requests impose a substantial administrative burden on public bodies diverting resources away from other important functions particularly where there is a high volume of complex requests;
- these direct administrative costs need to be considered in the context of the increased discipline and efficiency in the use of public funds as well as the substantial savings that can be achieved on account of an effective FOI regime;
- a recognition that the charging of FOI fees is appropriate where a request gives rise to a substantial administrative cost for activities such as identifying and locating records falling under the request;
- consideration should be given to options such as the provision of some uncharged search and retrieval time, imposing a cap above which requests should not be processed and factoring decision-making time into charges,
- FOI supports accountable and responsive government but a simple administrative form of access outside of FOI Acts offers substantial benefits
- Proactive publication of information and Open Data policies are key to a more effective means of providing information on government activities and public administration.

5. Review of FOI Fees by Government – July 2012 and July 2013

5.1 The issue of FOI fees was examined in detail by the Government in the context of agreeing the policy on FOI Reform in July 2012 and was reviewed in advance of the publication of the legislation to reform FOI in July 2013.

5.2 The review recognised that a balance had to be struck between the public interest in ensuring that access to non-personal official records (in respect of which upfront fees were charged) was facilitated and that the FOI regime operated effectively.

5.3 It was acknowledged that the existing FOI fees regime – both SRC and application fees did not result in any meaningful cost recovery and could not, therefore, be justified on financial grounds. However, it was believed very important to also have regard to other relevant factors including:-

- the very substantial reductions in the numbers employed in the public service;
- the significant programme of rationalisation of State bodies;
- the financial and human resources constraints to which public bodies are subject to providing public services;
- the proposed extension of Freedom of Information to all public bodies and those significantly funded by the State;
- the resources and capacity available to the Office of the Information Commissioner in processing Freedom of Information appeals to the Information Commissioner

5.4 The Government agreed in July 2012 that there was a real risk that abolition of the application or indeed all FOI fees would be likely – against the backdrop of the extension of FOI and in the absence of the significant and sustained enhancement across the board in the management of Freedom of Information requests – to have the potential to create very significant administrative pressures for public bodies to the point that priority and/or frontline public services would be adversely affected by the diversion of public servants time to dealing with a substantial increase in non-personal FOI requests.

5.5 In that context, it was also believed that a situation in which the administrative system and/or particular high-profile public bodies discharging significant responsibilities in relation to the provision of key public services came under excessive administrative strain on account of abolition of fees, could cause serious damage to the credibility and reputation of Ireland's Freedom of Information regime

5.6 Government, therefore, agreed to retain the application fee:-

- to promote focused and targeted FOI requests and
- to guard against an excessive administrative demand being generated by FOI in an environment where staffing resources in public bodies are very constrained.

- to act as a filter - avoiding risk of FOI becoming the default option – i.e. provide an incentive to look for information elsewhere first
- to reinforce the important message that there are substantial opportunity costs measured in terms of public servants' time in dealing with FOI requests.

5.7 In conclusion, it is clear that the main elements of the case for the retention of FOI application fees as set out above that underpinned the approach taken in the published Bill closely reflect the concerns raised in the reviews of FOI regimes discussed in Section 4 of this paper. The central issue to be considered is whether other available options to address these issues, other than through the maintaining of the application fee for non-personal FOI requests, could be effective in securing the desired outcomes in this area without impacting adversely on the public's ability to access official information.

6. Proposed Reductions in Internal Review, Appeal and SRC Fees

6.1 In assessing priority for reform of FOI fees generally, the Government decided, on the Minister's advice in July 2012, that the introduction (in 2003) of prohibitive fees for internal review and appeal cases to the Information Commissioner (i.e. €75 and €150 respectively) represented a serious impediment to ensuring the effective operation of the FOI system overall.

6.2 The evidence was that the introduction of high appeal fee levels has acted as a very strong disincentive to applications for both internal reviews and appeals by requesters who are dissatisfied with the decision-making of public bodies. The consequent diminution in oversight and scrutiny by the Information Commissioner of the implementation of the legislation by public bodies is unlikely to have a positive effect on the quality of decision-making or the extent to which decision-makers would apply key balancing tests, in particular relating to the public interest favouring release.

6.3 The very substantial reductions agreed by Government in the level of these fees to €30 and €50 (in the case of internal review and appeal fees respectively) was therefore, a core element of the overall package of the Government's FOI reforms.

6.4 In revisiting the issue of FOI fees in July 2013 in light of the pre-legislative scrutiny report prepared by the Joint Oireachtas Committee on Finance, Public Expenditure and Reform the Government agreed, on the Minister's recommendation, to the proposal that the first two hours of search, retrieval and copying time on records released under FOI should be provided free of charge and a cap of €500 should be imposed on the total level of SRC fees charged by public bodies.

6.5 These proposals were introduced through amendments tabled by the Minister at Committee Stage for the Bill. In particular the proposal not to charge for the first two hours of search, retrieval and copying time for records released under FOI which would otherwise in principle give rise to search and retrieval fees in excess of €40 was in recognition in part of the existence of the upfront application fee for non-personal FOI requests of €15.

6.7 The proposals for reform of FOI fees introduced at Committee Stage drew on the experience of other jurisdictions in, for example:-

- seeking to reduce high application fees for internal review and appeal which are likely to discourage full use and more effective operation of the FOI regime
- removing search and retrieval fees for requests that do not give rise to a significant administrative burden for public bodies;
- setting a cap on search and retrieval fees to preclude the scope for excessive estimates of search and retrieval fees given the proposed strengthening of the provision to refuse requests on the grounds that they are voluminous.

6.8 The Minister's decision to withdraw all amendments relating to FOI fees at Committee has provided the opportunity for a 'root and branch' review of FOI fees taking into account international evidence as well as the proposals for reform introduced at Committee Stage.

7. FOI Fees: Assessment of Options

7.1 In terms of public debate, a major point of contention from the very beginning of the process to reform the FOI Act was whether or not there should be a charging system for accessing information; and if there was to be a charging system, the format it should take.

7.2 Fees and the ability to levy fees, have been a feature of the FOI system in Ireland since it was first put in place. As set out in section 2 of this paper, the 1997 Act (which did not contain an up-front application charge), provided for a search, retrieval and copying fee (SRC) system that imposed a charge in recognition of the actual cost involved in the retrieval of information under the legislation.

7.3 There is, in principle, merit in the contention that there should be no application fees or indeed no fees of any kind for FOI requests given the undoubted benefits of FOI. Many examples can be highlighted where the use of FOI and the transparency it has engendered has played an important role in identifying and helping to prevent waste and inefficiency in the use of public funds. However, the practical day-to-day operation of FOI does involve a real cost to the public bodies concerned. The information summarised in Section 4 and Annex 1 of this paper reflects this reality as it confirms that relatively few countries have chosen to fully apply the policy of no FOI fees in practice.

7.4 In addition to the international precedent, there are particular current realities that pertain in Ireland, that need to be taken into account in assessing the issue of FOI fees. The State's current difficult fiscal position cannot be discounted. In what remains a severely constrained fiscal environment in which public service numbers have been substantially reduced, the provision of public services is subject to strict budgetary limitations and a broad range of benefits to citizens have had to be curtailed and user-charges have had to be introduced or increased in several areas.

7.5 Another critical element of the assessment of this issue relates to the impact of the elimination of FOI fees on the ability of public bodies to operate effectively and carry out their primary responsibilities as well as to deal with their responsibilities under FOI legislation. In terms of the latter, a particular priority relates to the need to safeguard public bodies' operational performance in respect of FOI in order to underpin the credibility of the freedom of information regime in Ireland overall, in terms of the risk that the elimination of all FOI fees would generate a very sharp increase in FOI requests and the volume of information sought that would overwhelm the capacity of the administrative system.

7.6 In order to help secure Ireland's fiscal sustainability there has been a reduction of approximately 30,000 in public sector numbers. The proposed extension of FOI is expected to automatically comprehend in the region of another 70 public bodies in addition to the 500 approx. public bodies already subject to the Act. It is also the Government's intention to bring bodies which are significantly funded by the Exchequer within the provisions of the FOI legislation. There is an evident risk that the abolition of all fees could create a marked imbalance between the number of FOI requests received or volume of

information sought as compared to the capacity of the administrative system to deal with FOI requests.

7.7 Providing for charges signals the existence of the costs involved in providing the FOI service. If FOI fees were abolished in full, the absence of any incentive for a FOI requester to recognise that there are costs to processing FOI requests has a clear potential to lead to a very substantial increase in FOI requests and the extent of the information sought. This would ultimately culminate in a situation that public bodies would not have the administrative capacity to deal with the overall number of requests without impacting in a substantial way on their ability to properly discharge other important roles and responsibilities. This opportunity cost relates to the time that public servants spend in dealing with FOI requests rather than in carrying out their primary role and responsibilities in relation to the provision of public services.

7.8 In the above circumstances it would not be tenable that non-personal FOI requests should no longer require the payment of fees whatsoever particularly given the substantial cost to public bodies borne by taxpayers at large in processing non-personal FOI requests.

7.9 Clearly in circumstances that no fees were charged, the ability of the administrative system to effectively deal with the increased volume of FOI requests, and the increased volume of information sought in such requests that might be expected to arise, would potentially be severely compromised, and this would undercut the objective and benefits of the FOI reforms which the Minister is proposing. Given this and the use of SRC fees in many jurisdictions, the case is strong for retaining some method or combination of methods for encouraging the refinement of requests or indeed removing the need for requests if the system is expected to continue delivering effectively and to a high standard.

7.10 The actual total amount of FOI fees collected by public bodies only constitutes a small percentage of the total economic cost of dealing with FOI requests. Indeed there is an administrative cost to collecting and processing the fees and it is not clear that there is any net gain to the State in direct monetary terms. FOI fees were never intended as a full cost-recovery mechanism. The low nominal application fee for non-personal requests which has remained unchanged since 2003 together with the SRC charge was intended to ensure that Ireland's FOI regime operated effectively and that public bodies could meet their statutory obligations as set out in FOI legislation.

7.11 The evidence suggests however that the current fees system is not achieving its objective – SRC fees are rarely applied, with data for the first nine months of 2013 showing that SRC fees were applied by public bodies in only 5% of cases. There is clearly scope for more effective use of the SRC fees to limit the volume of information sought in particular requests to more reasonable limits.

7.12 This is evidenced in the UK system as seen in section 4 where there is no up-front fee and no search and retrieval charges unless above a certain threshold, and that threshold acts as a disincentive to requestors to seek voluminous requests. On the contrary, in the UK, public bodies refuse to process requests unless requestors refine their requests to bring them within the threshold and voluminous requests are no longer an issue. The Australian regime applies fees for processing requests (including decision-making time) and also applies caps above which requests including personal requests need not be processed.

7.13 The review of the international position shows that Ireland is an outlier amongst EU countries in having an up-front application fee. Indeed as set out in section 4, only 15 countries out of 95 have such a fee, and none of these are EU members. Australia had introduced a fee after some years of implementation but subsequently removed it again and the UK considered it but decided against it. Other countries appear to rely on search and retrieval fees to ensure the FOI system operates effectively and efficiently.

7.14 Based on the very limited use of SRC fees in Ireland, there is scope to use SRC much more effectively and consistently across the public sector to achieve the objective of the focusing and targeting of FOI requests such that generate excessive and disproportionate administrative demands on public bodies.

7.15 On the basis of the above analysis, as well as the international position, the removal of the up-front application fee and revision of the SRC fees to encourage requesters to target or refine their requests appears, in all the circumstances, to be the preferred option.

7.16 Removal of the up-front fee would be in line with the Programme for Government commitment to reverse the amendments introduced in 2003 which included the introduction of the application fee. It is also in line with the Government's overall objective of achieving greater transparency and openness, and its recognition of the potential of FOI to achieve greater openness, transparency and accountability in decision-making. It would bring Ireland in line with other EU countries and would be in keeping with the spirit and objectives of the 1997 Act.

7.17 The removal of FOI application fees will lead to an increase in the number of requests. On the basis that the introduction of the application fee led to an estimated 50 per cent reduction in non-personal requests, the volume of non-personnel requests could be projected to double from its 2012 level of 4,971. This may, however, represent an over-estimate given the number of separate requests that are currently submitted as multifaceted requests to avoid payment of multiple application fees.

7.18 The Minister's assessment is that the implementation of a Code of Practice for FOI will strengthen the efficiency and effectiveness of the FOI regime in public bodies, together with the reform of the fee system to encourage more focused and targeted requests, as well as the legislative changes to better enable public bodies to deal with voluminous FOI requests, will ensure that the removal of the upfront application fee will not have a seriously detrimental impact on the operation of FOI in Ireland. Other actions such as the promotion of proactive publication of official information through the introduction of publication schemes under FOI, the transposition of the revised EU Directive on the Re-use of Public Sector Information and the Open Data initiative would also be expected to lead to a reduced reliance on FOI as the main mechanism to access official information.

8. Proposals for Reform of FOI Fees Regime

8.1 In light of the assessment above, this section sets out the Minister's proposals for the reform of FOI fees, building on the amendments introduced at Committee Stage last November and those included in the published Bill to be achieved through the amendments introduced at Report Stage in the Dáil shortly.

8.2 The main elements of the reform are as follows:-

- Remove the €15 application fee.
- Introduce a cap on search retrieval and copying fees (SRC) at €500 (25 hours)
- Introduce a further limit on estimated SRC fees at €700 (35 hours) above which an Freedom of Information (FOI) body could refuse to process a request (or if the requester agreed, the request could be processed with full SRC fees applying)
- Introduction of a minimum threshold of €100 (5 hours) below which no SRC fees would be charged; if SRC are above this level the full cost would apply subject to the cap of €500
- Retention of the deposit requirement in cases where estimated SRC charges exceed the minimum threshold
- Retention of the ability to reduce or waive charges in certain circumstances
- Reduction in the fees for reviews and appeals.
- Multi-faceted requests will be addressed through the power in the Act to refuse requests on administrative grounds (see Section 9 below).
- Introduction of a definition in the Bill to ensure that there is clarity on the activities for which SRC fees can be applied which includes all activities carried out leading up to the finalisation of a file containing the records for review by the decision-maker prior to release.
- Requests for personal information (70% of requests) will continue to be free except in very rare cases where the grant relates to a significant number of records.

8.3 The proposed introduction of a minimum threshold of €100 (5 hours) below which no SRC fees would be charged should encourage requesters to focus and target their requests to benefit from no charges. It should also ensure that fees would apply only to a relatively small proportion of non-personal FOI requests where the information sought is extensive and/or the requester has been unwilling or unable to refine or focus the request culminating in a situation where there is a very substantial processing requirement for public bodies. This approach would be consistent with the aim of SRC fees in the original legislation.

8.5 A survey (based on 2,460 FOI requests over the first three quarters of last year) showed that setting the threshold for application of SRC fees at this level would result in the majority of requests no longer incurring the charge. The results indicated that the average SRC fee, in cases where SRC fee was levied, was just over €130 and that just over 45% of cases incurred a charge in excess of €100. The proposed substantial level of uncharged search, retrieval and copying time should, therefore be sufficient to ensure that all reasonably focused requests can be processed without incurring SRC fees.

8.6 It has also been decided to retain the proposal to introduce a cap on search retrieval and copying fees that can be charged by public bodies at €500. This amounts to approximately 25 hours of search, retrieval and copying time that can be levied which may in practice require a considerably higher amount of time to be spent searching for and retrieving records on account of the legal prohibition on charging search and retrieval fees in respect of records that are not ultimately released.

8.7 In order to help address the issue of voluminous requests, it is being proposed to provide that if the estimate of the cost of search retrieval and copying exceeds €700 (approx. 35 hours), the public body has the option either of refusing the request on administrative grounds having worked with the requester to seek to refine the request to reduce the estimate below €700 or processing the request but charging the full cost of search and retrieval providing the actual charge for the request exceeds €700. This is intended to discourage ‘trawls’ of records with nothing specific in mind which can be extremely time consuming to process and to encourage instead more focused and specific FOI requests.

8.8 It is also very important to note that the FOI legislation continues to provide that the charges could be waived on one or more of the following grounds:-

- Where the administrative and related costs involved in collecting a fee on foot of a request were likely to exceed the fee itself;
- Where a person of limited means was seeking only personal information relating to him/herself;
- Where some or all of the information involved would be of particular assistance in understanding an issue of national importance.

8.9 Taken together, the package of proposals for the reform of Ireland’s FOI regime are believed to represent a fair and equitable balance between maximising the level of access to information for citizens while maintaining the ability of public bodies to deliver services, including FOI services, in an efficient and effective manner. They are also complementary with a suite of other transparency initiatives including the promotion of the proactive publication of official information, the adoption of publication schedules and disclosure logs, open data and other Open Government Partnership (OGP) commitments.

9. Multi-faceted FOI Requests

9.1 The issue of multi-faceted requests - where multiple FOI requests on entirely separate, distinct and unrelated matters are received – primarily from journalists – as a single request with payment of a single €15 application fee was identified in the context of the development of the FOI legislation as a very significant difficulty in seeking to ensure that the operation of FOI did not give rise to a very onerous administrative burden on public bodies. Multi-faceted requests differ from FOI requests on a specific issue or on related issues containing several different parts.

9.2 This practice had developed since the mid-2000s whereby some requesters would submit a number of separate and unrelated requests as one FOI request, for which only one application fee would be payable. It was not at all unusual for public bodies to receive FOI applications with one fee for €15 but containing up to a dozen separate FOI requests (or even more) on unrelated matters.

9.3 These types of FOI applications gave rise to a disproportionate administrative burden and cost for public bodies and gave rise to a situation that requesters making multifaceted FOI requests were benefitting from preferential treatment relative to other requesters who paid a single application fee for each separate FOI request.

9.4 The objective of the amendment to the FOI Bill introduced at Committee Stage of the Bill to address this issue was intended to secure payment of a fee for each separate and unrelated non-personal FOI request in order to ensure that every non-personal FOI requester was treated in the same way. Subsets or parts of the same question could continue to be included in a single request, the proposal did not require these to be split-up and multiple application fees paid.

9.5 Concerns were expressed at Committee Stage, in the media and by commentators that the amendment would not be interpreted as intended and that rather than the disaggregation of separate, clearly unrelated issues bundled together, requests for subsets of the same issue would be individually charged single application fees. In light of this apprehension, the Minister decided during the debate at Committee Stage to withdraw the amendment relating to multifaceted FOI requests (as well as the amendments providing for two free hours of search retrieval and copying time and the cap on SRC fees) and review the matter with the intention of submitting a revised amendment for Report Stage that would remove any uncertainty and clarify the policy objective of the proposal.

9.6 Subsequently a review has been undertaken of the policy objective, the drafting of the specific amendment as well as the outcome of the internal review by representatives of public bodies and the external review by stakeholders of FOI carried out in summer 2013 on the operation of FOI leading up the preparation of a draft Code of Practice for FOI.

9.7 The External Review Group established by the Minister last year to review the operation of FOI legislation recommended that multifaceted requests which are likely to be voluminous can and should be dealt with under section 15 of the proposed Bill (current section 10) which provides for refusal on administrative grounds (e.g. cause a substantial and unreasonable interference with or disruption of work). In addition, a proper application of the facility to charge SRC fees should discourage multifaceted or voluminous requests

giving rise to an excessive administrative burden on public bodies. Indeed removal of the up-front application fee means there will no longer be a particular incentive for a requester to make a multi-faceted request. Removal of this fee will also support the potential development of a portal in due course similar to those in place in other jurisdictions through which FOI requests could be submitted to aid tracking of requests and responding electronically thus reducing time spent on copying records for release.

9.8 The proposed Code of Practice for FOI is intended to help secure greater consistency in the approach taken in the application of SRC fees. The proposed legal obligation to make publication schemes requiring public bodies to publish official information on an administrative basis outside of FOI, publication of FOI disclosure logs and the implementation of the Minister's Open Data Initiative should mean much more information will be available in the public domain, which would be expected to reduce the requirement for FOI requests (multi-faceted or otherwise) to some extent in the future.

9.9 In the course of the review of the fees regime, updated information was collected on the actual prevalence of multifaceted FOI requests submitted to Government Departments. The information supplied by Government Departments in respect of the first three quarters of 2013 indicated that approximately 15% of non-personal requests could be classified as multifaceted - a lower proportion than the 30% previously reported in 2012.²

9.10 The Minister, therefore, has decided, in light of the foregoing, not to proceed with any amendment in relation to multifaceted FOI requests at Report Stage of the FOI legislation. Indeed such requests should become less of a feature in the future given the changes that are proposed in relation to the SRC fees and the removal of the up-front application fee.

² This probably reflects the inclusion of voluminous single requests with multiple parts in the original survey data

10. Conclusion

10.1 The FOI Bill, 2013 is a major step in restoring, updating and reforming Ireland's FOI regime. Consistent and coherent implementation of the legislation underpinned by the operation of the proposed Code of Practice for FOI can make a substantial contribution to increasing the openness, transparency and accountability of public administration in Ireland.

10.2 The proposed reforms to FOI fees set out in this paper are expected to strongly complement the whole thrust of the FOI reform legislation and other key initiatives such as the Open Government Partnership, the planned revision of Re-use of Public Sector Information legislation and Open Data to significantly increase the volume of official information made available to citizens.

10.3 As set out in the table in Annex 2 of this paper, the proposed reforms of FOI Fees levels will lead to a substantial reduction in the total amount of FOI fees compared to the charges currently in force.

10.4 Against the backdrop of the far-reaching reforms included in the FOI Bill and its extension to all public bodies, the proposed new FOI fees regime will assist in more effective management of the number of requests and the volume of information sought. This will strongly complement the new policy direction to proactively publish information widely including information sought routinely under FOI, the introduction of disclosure logs of FOI requests, publication schemes and Open Data policies leading to a major strengthening in FOI in Ireland.

Annex 1 – Research on FOI Fees.

A. Survey of Public Bodies

A detailed survey was carried out of 74 public bodies, 16 of which were Government Departments in respect of the period 1 January 2013 – end-October 2013. The responses covered 2,460 non-personal requests. This is a large sample size as it comprises 48 per cent of the non-personal requests received by public bodies in 2012. The key findings were:

- 47% of the non-personal requests were received by Government Departments
- FOI requests received by Government Departments accounted for 80% of the cases where search and retrieval fees were charged
- 15% of the non-personal applications were multifaceted (with an average of 3.6 parts per request) – the variation in this figure relative to the 30% figure quoted reflects the clearer definition of multi-faceted requests used in this survey. The previous survey probably included single requests with multiple parts.
- The revenue from the associated application fees was over twice the Search and Retrieval fee revenue. This is in line with the trend over the period 2004-2012.
- Search and retrieval fees were only charged in just over 5% of requests
- The overall average search and retrieval fee across all non-personal requests was €6.73
- The average search and retrieval fee in cases where it was charged (i.e. in 126 cases) was just over €130 – representing approximately 6 hours of search and retrieval time
- 47% of all non-personal requests were believed to be from journalists but in the case of Government Departments, journalists accounted for over 65% of non-personal requests. This is in line with historical data which showed that c.50% of all non-personal requests are from journalists.

The main conclusions to be drawn from the results of the survey are that:-

- multifaceted applications comprise a lower proportion of total non-personal requests than previously advised to the Department;
- while there are examples of multifaceted requests containing a very large number of separate requests, the average is 3.6; and
- the search and retrieval fees regime has largely fallen into disuse other than in relation to what appears to be a small number of requests which give rise to a significant level of search and retrieval activity.

A further follow-up survey seeking further details of Search and Retrieval fees charged from Jan 1 2013 to end October 2013, based only on Government Departments showed that:

- The average S&R charged was €141, which was 61% of the initial estimate notified to the requester.
- The average initial estimate notified to requesters is €232 while the average deposit sought is €65.
- 23 requesters paid less than €50, 20 paid between €51 and €100, 23 paid between €101 and €200 with only 13 paying more than €200.
- almost 70% of cases where S&R is charged involve a payment below €140.

In a separate exercise undertaken by the Department based on survey information collected from 26 public bodies on FOI requests in general (i.e. both personal and non-personal) it was estimated that the average cost of dealing with both personal and non-personal FOI requests was approximately €600. The average cost of non-personal requests which are often considerably more complex than personal requests is, therefore, likely to be considerably higher than this estimate of €600.

B. Access to Information Fees Internationally

FOI fees – usually but not exclusively in the form of search and retrieval fees – are in fact a common feature of FOI regimes internationally.

According to the Global Right to Information Rating (prepared by Access Info Europe and the Centre for Law and Democracy) of the 33 (out of 34) OECD countries included in their survey, all of them have provisions to charge some form of FOI fees – however, the Austrian access to information legislation cannot be said to be a FOI enactment.

Apart from Ireland, eighteen can charge search and retrieval fees including for example Australia, the United States, Finland, New Zealand, Poland, Portugal etc. and 3 can charge an up-front application fee for FOI. While worldwide a small number of jurisdictions

charge no fees for FOI, it is noteworthy that the principle of an entirely free fees regime for FOI comprises the exception rather than the rule internationally. The 3 OECD countries, other than Ireland which can impose upfront application fees for FOI requests are: Canada, Israel and Japan³. This indicates that while just over 12.5% of OECD countries with FOI type legislation charge “up-front” FOI fees, charging for search and retrieval fees and copying is the norm.

³ The Japanese legislation simply states that the fee will be calculated on a case by case basis, so as to be as affordable as possible.

FOI Fees in other OECD jurisdictions

Colour Code			
Charges	Partial/Optional charges	Free	
Country	Application	Search & Retrieval	Reproduction
Australia	Free	Search and retrieval fees apply, as do fees for 'decision making and consultation'	Reproduction fees can be charged
Austria	Limited "access to information in law" but no FOI type legislation in place		
Belgium	Free	Free	Fees charged for real cost of copies
Canada	Access fee applies	Search and retrieval fees apply, 50% charged up-front	Reproduction fees can be charged
Chile	Free.	Free	Fees apply to reproduction only.
Czech Republic	Free.	Charge for search and retrieval. Additional fees can also be charged for extensive requests.	Reproduction fees can be charged
Denmark	Free	Free	Fees apply to reproduction only.
Estonia	Free	Free	Fees apply to reproduction only. (First 20 pages free)
Finland	Free	Retrieval charges apply	Reproduction fees can be charged
France	Free	Free	Fees apply to reproduction only.
Germany	Free	Fees can apply beyond copying costs.	Reproduction fees can be charged
Greece	Free	Free	Reproduction cost only
Hungary	Free	Free	Reproduction cost only
Iceland	Free	Free	Reproduction cost only

Israel	Charge to make request	Search and retrieval fees apply	Reproduction fees can be charged
Italy	Free	Free	Reproduction cost only
Japan	Charge to make request	Search fees appear to apply	Reproduction fees can be charged
Luxembourg	No FOI type legislation in place		
Mexico	Free	Free	Reproduction and delivery cost only.
Netherlands	Free	Free	Reproduction costs only. First six copies of document free. Electronic data etc, provided free.
New Zealand	Partial – ministries can demand access fees in advance, can include charges at own discretion	Organisations can charge for time spent locating information.	Reproduction fees can be charged. First 20 pages of documents free.
Norway	Partial – act allows King to make regulations concerning payment. However these cannot exceed reproduction and postage costs	Search and retrieval fees can apply in certain instances.	Reproduction fees can be charged
Poland	Free	Reproduction fees apply & Legislation appears to allow for search and retrieval.	Reproduction fees can be charged
Portugal	Free	Legislation allows bodies to charge for 'services provided' charged at market rate.	Reproduction fees can be charged

Slovakia	Free	Free	Reproduction costs only
Slovenia	Free	Reproduction costs only, other than circumstance where the recipient of the information wants to reuse it for commercial purposes.	Reproduction costs only
South Korea	Free	Reproduction fees apply – can be waived in certain cases 'Administrative fees' apply – only postage costs specified	Reproduction fees can be charged
Spain	Free	Free	Reproduction fees apply.
Sweden	Free	Free	Reproduction costs only.
Switzerland	Free	Search fees can apply. Waived in the case of minimum costs	Reproduction fees can be charged
Turkey	Free	Charge applies for procedure. Interpreted as retrieval costs	Reproduction fees can be charged
UK	Free.	Charges for Search and Retrieval – not levied if less than £600 for Central Gov. or £450 for Local Authorities	Fees can be charged for postage, copying or format transfer.
USA	Free	Charge for search and retrieval after first two hours. First 100 pages free.	Reproduction fees can be charged

Annex 2 – Projected Reductions in FOI Fees.

Hours	Application Fee	Current Search & Retrieval & Copying Fees	Current Total FOI Fees	Proposed Application Fee	Proposed Search & Retrieval & Copying Fees	Proposed Total Fees	Actual Reduction	Percentage Reduction
	€	€	€	€	€	€	€	%
1	15	20.95	35.95	0.00	0.00	0.00	35.95	100.0
2	15	41.90	56.90	0.00	0.00	0.00	56.90	100.0
5	15	104.75	119.75	0.00	0.00	0.00	119.75	100.0
7	15	146.65	161.65	0.00	146.65	146.65	15.00	9.3
10	15	209.50	224.50	0.00	209.50	209.50	15.00	6.7
15	15	314.25	329.25	0.00	314.25	314.25	15.00	4.6
20	15	419.00	434.00	0.00	419.00	419.00	15.00	3.5
25	15	523.75	538.75	0.00	500.00	500.00	38.75	7.2
30	15	628.50	643.50	0.00	500.00	500.00	143.50	22.3
35	15	733.25	748.25	0.00	500.00	500.00	248.25	33.2
40*	15	838.00	853.00	0.00	838.00	838.00	15.00	1.8
45*	15	942.75	957.75	0.00	942.75	942.75	15.00	1.6
50*	15	1047.50	1062.50	0.00	1,047.50	1,047.50	15.00	1.4
55*	15	1152.25	1167.25	0.00	1,152.25	1,152.25	15.00	1.3
60*	15	1257.00	1272.00	0.00	1,257.00	1,257.00	15.00	1.2

*Under proposed fee regime if the estimate of the cost of search and retrieval exceeds €700 (i.e. 30 hours of search and retrieval time), the public body has the option either of refusing the request on administrative grounds having worked with the requester to seek to refine the request to reduce the estimate below €700 or processing the request but charging the full cost of search and retrieval providing the actual charge for the request exceeds €700.

Report of the External Review Group on the Implementation of the Freedom of Information Act

June 2013
FOI Central Policy Unit
Department of Public Expenditure and Reform

External Review Group on the Implementation of the Freedom of Information Act

Report

Introduction

The key objective of the review is to improve the operation of the Freedom of Information (FOI) Acts and to assist in the development of a Code of Practice to guide public bodies in operating FOI.

Two groups (one external, one internal) conducted separate reviews of the operational aspects of FOI and through this process identified areas where adjustments or improvements in practices might be made.

The remit of the External Review was to advise on:

- improvements in procedures and practices to facilitate requesters and enhance compliance by public bodies with the Act;
- structures and guidance to support user interests, and decision makers so as to secure good practice and consistency in implementing the Act;
- operational practice by public bodies in key areas relating to the Act, including the publication of FOI requests, related information, and publication of information generally outside of the Act.

This report sets out the External Group's recommendations for enhancing the implementation of FOI by public bodies.

These recommendations, along with the output from the Public Bodies Review Group (the internal group) and the contribution of the Department of Public Expenditure & Reform will inform the development of the Code of Practice.

Membership of the Group:

Mr Gerry Kearney, Chair (former SG of D/Arts, Heritage and the Gaeltacht)

Mr Tom Felle, UL

Professor Maeve McDonagh, UCC

Ms Nuala Haughey, Transparency International

Mr Seamus Dooley, National Union of Journalists

Mr Peter Feeney, (ex RTE)

Mr Gavin Sheridan, Journalist and blogger

Mr Colm Keena, Irish Times

Mr Stephen Rafferty/Ms Ann Lyons, Office of the Information Commissioner (Observer)

Chapter 1 Publication of Information

The proactive publication of more public information (where that information does not fall under the exemptions in the Act) would help underpin a culture of openness and transparency in public bodies. This would lead to better and more accountable administration and an enhanced understanding of public policy.

It is also likely that proactive publication of information by public bodies could reduce the volume of FOI requests.

Routine Publication of Records:

Public bodies could publish a broad range of official information on a routine basis outside of FOI. In this context, the publication of information in open, accessible formats on the websites of public bodies should not be overly burdensome or costly. Such an approach would converge with emerging good practice as reflected in the Open Data movement and would be in line with the revised EU Directive on the Re-use of Public Sector Information.

Information which is consistently the subject of FOI requests could be published routinely by public bodies, at regular intervals, outside FOI. Such routine publication would help free up staff resources in public bodies from dealing with repeated FOI requests.

In this regard it is noted that British Columbia routinely publishes the travel expenses of Ministers¹ and datasets². The Australian FOI Act requires public bodies to publish information to which they routinely give access in response to FOI requests – subject to exceptions for personal information and business information where it would be unreasonable to publish such information.³

The Code should give guidance to public bodies to support publication of information routinely outside of FOI, as well as information contained in frequent requests. This might include publication routinely under the following headings: expenses; spending; information relating to public consultations; successful tenders etc.

FOI itself should be more prominently and consistently displayed across the homepages of public bodies. The use of standardised email addresses (e.g. FOI@per.gov.ie) and phone lines should be a feature on every public body's website.

Publication Schemes:

Under existing FOI legislation, sections 15 and 16 manuals provide information on, inter alia, the structures and functions of public bodies, and their rules and procedures. These reflect arrangements from a time of paper-based publications. These are frequently out-of-date and the need for hard copies has greatly diminished.

By way of alternative, FOI publication schemes are established as good practice in other jurisdictions as a means of disseminating information relating to the functions and activities of public bodies.⁴ Such schemes are used for example in the UK and Australia and are provided for under legislation.

¹ <http://www.openinfo.gov.bc.ca/ibc/index.page?WT.svl=breadcrumb>

² http://www.data.gov.bc.cadbc/about/open_data.page?

³ Australian Commonwealth FOI Act, s.8(2)(g).

⁴ For example in the UK and Scotland,

It is understood that the new FOI Bill proposes to place an obligation on public bodies to prepare a publication scheme.

The Group believed it is important that, in engaging actively and positively with such an approach, public bodies must improve current arrangements by publishing and regularly updating extensive information and providing ease of access to documents and general information on their functions, structures, systems, procedures and practices.

While recognising that public bodies vary in size and in the nature of their functions and that ‘one size won’t fit all’, the Group is concerned to ensure that there is a broad coherence and consistency of approach across public bodies as a whole.

Therefore, without being unduly prescriptive, the Group recommends that the Code provide guidance as to the detail of what should be published by particular public bodies or classes of public bodies under the schemes. There would also need to be very clear guidance on minimum standards of what should be published. Clarity should also be provided as to the respective responsibilities of the various parties in the legislation in this regard, (i.e. the Minister, the Information Commissioner and Heads of public bodies).

Disclosure Logs:

A number of jurisdictions require bodies subject to FOI legislation to publish disclosure logs on their websites. For example, the use by public bodies of disclosure logs has been required by law in Australia since 2011.⁵ In the UK, the Information Commissioner has a disclosure log⁶. Some District Councils also appear to have disclosure logs⁷. A disclosure log is essentially a list of FOI requests made to a public body together with the response of the body to such requests and it usually includes the records released in response to such FOI requests. Disclosure logs enable members of the public (potential requesters) to see what requests have been granted to others and provide the potential to access records released in response to such requests.

The Scottish Code of Practice in part 6.2 on establishing and maintaining a ‘disclosure log’ states that: “Authorities are encouraged to maintain a "disclosure log" of information requests, i.e. a publicly available description of some or all of the information which the authority has previously released under the regimes with, where feasible, direct online access to the information itself. Authorities may, for example, list all requests received or only those where the information is likely to be of interest to the wider public. Personnel working in public bodies should be familiar with any such log and be able to provide guidance to potential applicants on how to make use of it. Maintaining a disclosure log may pre-empt information requests, by highlighting what information has already been made available”⁸.

The Group noted that here in Ireland while there is currently no legislative requirement to publish a disclosure log, some Government Departments have done so voluntarily. For example, the Department of the Taoiseach publishes a list of non-personal freedom of

⁵ Australian Commonwealth FOI Act, s.11C.

⁶ http://ico.org.uk/about_us/how_we_comply/disclosure_log

⁷ <http://www.teignbridge.gov.uk/index.aspx?articleid=11061>

⁸ <http://www.scotland.gov.uk/Resource/Doc/933/0109425.pdf>

information requests that have been granted or part granted,⁹ as does the Department of the Environment.¹⁰ The Department of Communications, Energy and Natural Resources¹¹ and the Department of Transport, Tourism and Sport¹², as well as publishing details of what has been requested and its response to such requests, also publish the records disclosed in response to the requests received.

There are clear benefits for public bodies in adopting an approach to FOI that recognises and facilitates greater utilisation of technological developments. Disclosure logs could be a first step, with data made publicly available ideally conforming to open data standards¹³. The objectives of the revised EU Directive on the Re-use of Public Sector Information also need to be taken into account in this context.

Ideally in order to maximise their value for user, disclosure logs of non-personal FOI requests should be made available on the websites of public bodies in both PDF and CSV/XLS formats and should set out a list of FOI requests, the outcome and preferably links to information released in response. This would enable requesters to see what has already been issued and would help FOI officers to see what requests are made to other public bodies. Possible timeframes to apply prior to such disclosure could be considered. However, the legal, administrative and practical difficulties of widely publishing information released under FOI are also acknowledged by the Group.

Consideration should be given to the integration of disclosure logs with information made available under publication schemes. The province of British Columbia in Canada provides a good model in that regard. It has a centralised online catalogue of public information and it also provides a summary of information requested and processed during the past 30 days. Users may also sort by different options (e.g. publication date, Ministry or description). Users can select the title of the record to view the details and can use the links attached to records to download information (e.g. response letters, files)¹⁴.

Recommendations:

1. Routine Publication of Records:

1.1 Public bodies should be encouraged to publish a far wider range of information not subject to FOI exemptions or where appropriate redactions can be made on a routine basis outside of FOI.

1.2 Public bodies should be encouraged to publish information to which they routinely give access in response to FOI requests, subject to appropriate exceptions. This might include publication routinely under the following headings: expenses,- spending, information relating to public consultations, successful tenders etc.

⁹http://www.taoiseach.gov.ie/eng/Publications/Publications_2013/FOI_requests_Quarter_4_2012.pdf

¹⁰<http://www.environ.ie/en/FOI/RequestLog/>.

¹¹<http://www.dcenr.gov.ie/Corporate+Units/Corporate+Support+Unit/Freedom+of+Information/>.

¹²<http://www.dttas.ie/feature.aspx?Id=63>

¹³ See <http://5stardata.info/>

¹⁴http://www.openinfo.gov.bc.ca/ibc/search/results.page?config=ibc&sortid=1&P110=high_level_subject:FOI%20Request&P110=dc.subject:FOI%20Request&rc=1&as_ft=i&as_filetype=html&sortid=1&date=30

1.2 FOI should feature prominently on the websites of public bodies.

2. Publication Schemes:

2.1 Given the proposed adoption of publication schemes, the Group recommends that public bodies be required in that context to:

2.1.1 publish specified categories of information – such as organisation charts/structure, functions, classes of records held, contact points etc.

2.1.2 consider proactively publishing other official information

2.1.3 publish a plan setting out the information they propose to publish under the Information Publication Scheme (in particular the information referred to at 2.1.1 and 2.1.2 above) and how they propose to publish that information.

2.2 Publication schemes should be readily accessible on the websites of agencies of all public bodies.

2.3 The operation of publication schemes should be subject to appropriate oversight and review by the Information Commissioner, as well as subject to direction under guidelines by the FOI CPU. Peer-review by FOI networks to encourage good practice should also be in place.

2.4 The Group particularly believe that review and reporting by the Information Commissioner on the performance of public bodies in the delivery of their publication schemes is essential, preferably within specified timeframes, so as to maintain standards and observe good practice. The Group makes this recommendation while fully cognisant of the need for the provision of additional resources to the OIC for this purpose.

3. Disclosure Logs

3.1 Public bodies should be required to maintain disclosure logs including details of FOI requests made to that body, correspondence between the requester and the public body concerned, and the decision made. In the medium-term, consideration should be given to publishing records disclosed in response to requests. In practice, access should normally be provided to such previously released records without the need for further recourse to FOI. Exemptions should be provided for in respect of personal and commercially confidential information etc.

3.2 Records, information, data and datasets published by public bodies should as a matter of routine be provided in open accessible formats.

3.3 Disclosure logs should in due course be integrated into public bodies' Publication Schemes.

3.4 Disclosure logs of all public bodies should ultimately be accessible via a central website to be maintained by the Central Policy Unit.

3.5 When undertaking third party consultations on the release of information subject to an FOI request, the third party should also be apprised of the possibility of the record being made available through a disclosure log.

3.6 Standard letters of acknowledgement to requesters should be used as an opportunity to apprise requesters that their requests, including name of the requester, will be placed on disclosure logs.

4. General

4.1 The Group noted the particular legal protections applicable where records are released under FOI.

4.2 Given the breadth of its recommendations for release of information outside of FOI, the Group considers it advisable that the legal position regarding such wider release be assessed and if required, any appropriate legal protections, consequent on its recommendations, be also provided.

Chapter 2 Processing FOI Requests

FOI officers and decision makers should at all times have appropriate regard to the public interest in assessing documents for release. Consistent with the principles underlying the legislation, the option of dealing with requests for information outside the FOI Act where the information is not subject to exemptions should always be considered.

Where requests are processed under FOI legislation, the Group believes that significant improvements are required in the operational effectiveness of the FOI systems in public bodies in general. The Group make this point while acknowledging, the significant resource and staffing constraints which obtain at the present time. Areas where the Group believes the efficiency of the system overall could be enhanced include the following:

- Improving the accessibility of FOI officers to requesters
- The processing of FOI requests electronically where requesters so desire and in formats that are searchable and that can be reused.
- Appropriate training of FOI officers. This should include provision of IT competence given the use of new technologies and the need to be able to supply records electronically in particular formats. This may result at times, for example, in a need to redact information in spread sheets or databases.
- It was noted that FOI training to accredited standards has on occasion featured abroad as part of a wider strategy to improve organisational performance in the handling of FOI. The Group saw merit in this approach.
- Greater consistency in charging of search and retrieval fees across public bodies so that similar public bodies charge similar fees for the same requests or can provide an objective justification when charges differ significantly. A more uniform charging system will help address the perspective held by some FOI users that search and retrieval fees are deliberately used by some public bodies on occasion to discourage requests. There is often a lack of transparency on the basis for the charging of search and retrieval fees and a lack of awareness of requesters of related rights of appeal to the OIC at no cost.
- Standard letters currently in use by public bodies for communicating with FOI requesters require significant review and updating. It should be a particular priority to simplify the language used in the letters and to improve the quality and clarity of the information provided.
- Significantly improved consistency in the application of exemptions is essential. The perspective of the Group is that exemptions sometimes appear to be used with little documented evidence of consideration of actual injury likely to arise from release, or of the balancing of the public interest test in disclosure. Improved guidance from the FOI CPU and training could assist in addressing this issue.

- Variations are apparent across different public bodies as to how they define multi-faceted and voluminous FOI requests. Some multifaceted requests could in fact be voluminous if the handling of such requests poses a difficulty for public bodies; better use could be made of the current section 10 which allows refusal on administrative grounds.
- A particular focus is required on improving information management systems so as to support more efficient processing of requests.

Recommendations

1. Communications/engagement

1.1 FOI officers and decision makers should have appropriate regard to the public interest in assessing and releasing documents at all times and in the spirit of the legislation to deal with requests outside the FOI Act, wherever practicable.

1.2 Dialogue and communications between public bodies and requesters could be significantly improved. FOI officers and decision-makers should positively engage with requesters to help refine requests.

1.3 There should be standardised email addresses for FOI officers in each public body and standardised contact formats (e.g. foi@taoiseach.gov.ie) instead of using personal email addresses as is the practice in some public bodies. The phone numbers of FOI officers should, in the normal course, also be made available.

1.4 Letters of reply issuing from public bodies to FOI requesters need to be overhauled. Standard letters should be simplified, updated and used in a consistent way by all public bodies. Template letters which public bodies draw from should be kept up-to-date in line with developments in FOI, be they CPU guidance, OIC findings or Court rulings.

1.5 Requesters should be made aware of their right to assistance in making a valid FOI request or refining a request. They should also be made aware of the process of internal appeals, as well as their right to appeal to the OIC.

2. Training

2.1 FOI officers and decision makers should be trained to an accredited standard in FOI (or to what is an equivalent to an accredited standard).

2.2 The training should enable FOI officers and decision-makers to have confidence and competence in processing electronic data and in using databases/redacting information from such sources.

2.3 Explicit guidance should also be available to FOI officers and decision-makers generally from the CPU on what constitutes the “public interest”, based on for example, the assessment of public bodies, FOI networks, the outcome of the OIC’s reviews and best international practice.

3. Search and retrieval fees

3.1 There is an urgent need for significantly greater transparency and consistency in charging fees for search and retrieval. Notice of such charges should set out a clear breakdown of time involved, hourly charges and a clear explanation of costs.

3.2 The FOI Central Policy Unit should issue guidance to public bodies whereby each can adopt a consistent transparent approach in explaining the basis for the charging of fees to members of the public.

3.3 Requesters should also be advised of their right to appeal (for free) the charge through the process of internal review and to the Information Commissioner subsequently.

4. Electronic communications

4.1 Provision should be made for the use of electronic communications routinely for FOI purposes. Requesters should be able to submit an FOI request online, as well as receive any information ultimately released, via email if that is their preference and in the formats that they might request, where practicable (e.g. in a spread sheet as opposed to a pdf). There should be greater standardisation around formats. This would not only be more efficient, but would also save on costs (printing, postage, time etc.).

5. Exemptions

5.1 Exemptions should be applied in a consistent manner in public bodies taking account of the specific features of FOI requests. This requires active leadership and the adoption of a proactive approach in disseminating information on precedents and interpretation, in the training of FOI decision makers, in monitoring emerging issues and in promulgating good practice. The FOI CPU and the FOI Networks should take a lead role in this respect.

5.2 When a public interest test is applied to requests for information, details as to the examination of the public interest, how the test was applied and relevant cases should be cited and all relevant factors taken into account should be provided. This would help discourage requests for internal reviews and appeals to the Information Commissioner by highlighting the appropriate and legitimate basis on which requests have been refused or partially granted. It could give rise to significant efficiency gains in terms of the time and resources of public bodies, the OIC and FOI users.

5.3 If a request is more relevant to Access to Information on the Environment regulations (AIE) or the EU Re-use of Public Sector Information, then the requester should be advised of the availability of the alternative processes and the request should be processed under whatever is the appropriate regime.

5.4 Multi-faceted requests increasingly feature in FOI. In some instances they can present significant difficulties for public bodies because of the voluminous nature of the records involved. Where such difficulties arise, public bodies should consider the appropriate use of Section 10 of the FOI Act (voluminous requests) in circumstances where the process of “reasonable assistance” has not been possible. FOI officers should however first seek to engage and communicate with the requester in order to have the request modified so that it is no longer multi-faceted or voluminous.

6. Processing of Requests

6.1 Records which are readily available should be released promptly, without awaiting the expiry of the time limits in the FOI Act.

6.2 Consideration should be given to FOI and to more efficient processing of requests (“access by design”) in the design and development of IT systems.

6.3 Arrangements should be put in place particularly in small organisations to ensure that no conflict of interest arises in the processing of requests – i.e. an internal reviewer must not decide on information for release relating to themselves or issues and activities that they have had a direct involvement in.

7. Statistics

7.1 Public bodies should provide the necessary statistics early each year to enable the publication of statistics relating to performance during the preceding year on implementation of the FOI Act. The collation of such statistics from across public bodies should be undertaken through sectoral networks, and overseen by the Central Policy Unit.

Chapter 3

Office of the Information Commissioner (OIC)

Engagement between public bodies and the OIC

Good communications and engagement between public bodies (FOI officers and the CPU) and the OIC is absolutely essential to enable FOI to work effectively. The proposed Code should include explicit best practice guidance on how public bodies should interact with the OIC in connection with appeal cases.

A number of important steps could be taken to enhance the efficiency of the appeals undertaken by the Information Commissioner. Public bodies should be in a position to provide the OIC with files of records and submissions of good quality. They should comply with the required time-frames for the provision of such information. The submissions should set out the case for the decision made by a public body and justify use of exemptions. Schedules should be included with submissions listing records which were considered, as well as those which the decision-maker decided should be released or refused in whole or in part

FOI officers, as the central point of contact between a public body and the OIC, should be expert and highly knowledgeable in the area of FOI as well as having the competence and authority to support the successful progression and conclusion of the appeals process.

As the OIC has a role in facilitating settlements between requesters and the public bodies concerned, public bodies should ensure that their liaison person has competence and authority to progress the appeal.

Future role of the OIC

The OIC has a key role in ensuring the efficient functioning of the Act. It is currently reviewing its operating system and procedures and considering how best to ensure the efficient processing of appeals.

The Group posited that OIC might consider identifying the public bodies which perform well, i.e. demonstrate a good understanding of the Act through effective use of exemptions, consideration of public interest and harm test factors, provision of well argued cases and timely and good decisions which stand up under review. The OIC should showcase these on its website to promote good practice across the public sector.

In addition the OIC might contribute where appropriate, to the development of guidance notes by the CPU. As is the case in these other jurisdictions, this could be achieved without compromising the independence of the Information Commissioner in decision-making on appeal cases.

Publication by the OIC of all decisions might also be considered so that both requesters and FOI officers are aware of recurring issues that may arise in terms of the application of the Act. This would act as an important reference point for both parties and would serve as a means of developing the knowledge and understanding of public bodies of OIC decisions.

Guidance could be provided in, or separately mandated by, the Code of Practice as to how public bodies and FOI officers and the CPU interact with the OIC in the context of reviews, covering the various issues outlined above.

Chapter 4

Records Management

The Group noted that a good records management system is essential to an effective FOI regime and indeed to proper public administration. However, it also noted significant shortcomings in this regard under current arrangements. Records management has also become more complex due to the proliferation of electronic communications, the development of ICT systems and the changing configurations of public bodies.

The Group found therefore that there is a compelling need for clear guidance within public bodies on records management, including in relation to data creation and the routine retention and routine destruction of records. This would assist in the efficient retrieval of information which is the subject of an FOI request.

The Group noted that under Section 19(3) of the National Archives Act, 1986, the Minister for the Public Service (now the Minister for Public Expenditure and Reform) is permitted to make regulations for the proper management and preservation of records in the care of a Department of State.

Recommendations

The Group endorses the views of the Director of the National Archives regarding the need to make Regulations under both the National Archives Act, 1986 and the Freedom of Information Act, 1997 in relation to:

- the allocation of corporate and operational responsibility within public bodies for the discharge of records management and record-keeping responsibilities;
- the adoption by public bodies of recognised standards, including the international standard ISO 15489, on records management and requiring compliance by public bodies;
- the formulation of records management and record-keeping guidelines and procedures at organisational level to integrate technology use and the creation of electronic information into record-keeping systems where required to be captured;
- the formulation of current and relevant records classification schemes within public bodies;
- the development of records retention and disposal schedules; and
- monitoring and demonstrating compliance with standards, guidance and procedures.

Such regulations prescribing standards, guidelines and procedures (including file classification schemes and systems for the capture and management of records and retention and disposal schedules) will also bring transparency to the management, retention and disposal of records by public bodies

It was however noted that the National Archives Act does not extend to the full range of bodies currently subject to the Freedom of Information Acts, 1997 and 2003. It is recommended that appropriate measures to address this lacuna be considered.

Chapter 5

Training

The Group noted the considerable investment by the State in training in the context of the commencement of the FOI Act in the late 1990s. The benefits of such an approach given the central role of training to FOI knowledge and competence was agreed.

The Group therefore emphasised the importance of sustained training to maintaining good FOI practice across public bodies.

Training at four levels was reviewed and endorsed viz:

- Introductory/Basic awareness – the fundamentals of FOI for staff in public bodies
- Advanced course- for decision makers and internal reviewers
- Refresher seminars – these would update decision makers and reviewers on key decisions of the Information Commissioner, legislative and court developments, legal advice
- Train the trainers

Recommendations

Following discussion the Group also recommended that:

5.1 Training should cover the core principles of FOI, the public interest in providing information to citizens and the critical value of open Government to a thriving healthy democracy.

5.2 Training should evidence how FOI is also useful to demonstrate that public functions are discharged honestly and fairly.

5.3 Training should address processing of requests, formatting of records or files (i.e. pdfs, spread sheets etc.) redacting records, notable OIC and High Court decisions.

5.4 In order to support training and good practice generally, the CPU should regularly disseminate guidance and precedents from the OIC and the courts. CPU manuals and guidance notes should be similarly revised.

5.5 Guidelines on good records management and the use of tracking systems should also feature.

5.6 Training should help position FOI officers as champions of access to information in public bodies.

5.7 Training on FOI should focus also on the AIE, Data Protection legislation and the Re-use of Public Sector Information Directive so as to enable FOI officers to become familiar with all three mechanisms and to differentiate, where appropriate, between these three processes.

5.8 The Group further recommended that the CPU provide quality assurance in relation to the standards of external trainers, as well as strategically overseeing FOI training development and provision. Given that the Internal FOI networks have extensive experience and expertise in

handling FOI requests, they, along with CPU, should mandate, oversee and support training as well as directly providing informed expert knowledge at training events.

5.9 The concept of a panel of external trainers with appropriate expertise in place and available to public bodies following an appropriate procurement process was endorsed by the Group. It was noted in this regard that public bodies had previously extensively accessed the expertise of FOI trainers from common law countries, with positive outcomes.

5.10 On the issue of an IT-based helpdesk, the Group reflected on both positive and negative aspects of such an arrangement.

The Group was also advised that IT-based training could be used to support training on FOI. While such training would not have the same advantages of face-to-face training, it is low cost once developed and may be used widely. It could also be made available to the public to promote greater understanding of FOI and the process involved.

Chapter 6 - Structures, Supports and Networks

The Group noted a number of supports critical to securing the effective implementation of FOI. These are:

- The FOI Central Policy Unit (CPU)
- Management Boards in public bodies
- FOI Officers
- Decision Makers and Internal Reviewers
- Networks

FOI CPU

While decision-makers are at the coalface, appropriate structures are also needed in public bodies to support the functioning of the FOI Act. The CPU, Management Boards, FOI officers, Internal reviewers and Networks all play a central role. The CPU was established within the Department of Finance in June 1997 to lead, promote, guide and support preparations for the introduction of FOI across the public service and is now based in the Department of Public Expenditure and Reform.

The CPU developed guidance manuals for decision-makers, detailed guidance notes, standard letters to aid decision-makers and created an FOI website. The CPU was instrumental in the establishment of interdepartmental networks to support FOI decision-making, providing training and ensuring consistency and provision of guidance/advice. It highlighted the need for organisational changes within public bodies – decision-makers at appropriate grades, panel of internal reviewers in different functional areas where possible, supported by top management; and tracking systems to monitor progress and enable other decision-makers to learn from responses given. It became the central contact point for FOI officers and the OIC – disseminating/drawing attention to notable OIC decisions and court decisions. It provided hands-on advice to decision makers and also played a role in responding to queries from the public, provided policy advice to the Minister and had a role in obtaining legal advice from Attorney General's office on behalf of public bodies.

The CPU website and guidance have proved to be very important resources over the years and it was recognised that the CPU would need to update these given the new Bill and changes in the nature and complexity of requests.

Recommendations

6.1 The Group is strongly of the view that the CPU must constitute the driver of FOI and the key nucleus of leadership across public bodies. For this reason it is recommended that the CPU be strengthened through:

- strong resourcing, particularly at senior level to fulfil its leadership role and command authority across political and administrative interfaces, as well as support staff to provide critical advice, guidance, secretariat functions and liaison with public bodies, AGs and OIC;
- improved access to good international practice in FOI. This can be secured by a dedicated budget for strengthening competencies within the CPU, as well as developing its research capacity on precedents, along with significantly improved networking with practitioners in other common law jurisdictions;

- renewed ownership and endorsement of the CPU role by top management in D/PER.

6.2 Its functions should embrace: identifying and addressing emerging policy, precedent and practice issues, promulgating good practice, providing strategic oversight and direction of training, constituting the key central interface on FOI with Government, development and maintenance of a corpus of guidance, quality control on standard letters, sustaining alignment and synergies with FOI Networks, oversight of systems in place for the collation of statistics on a timely basis etc.

Supports and arrangements within organisations - Recommendations

Management Boards

The Group believes that within public bodies Management Boards/Management Advisory Committees should view FOI as part of core work and integral to the accountability of public bodies. Boards provide practical supports to enable efficient delivery of FOI through promoting good records management, by ensuring appropriate arrangements are in place i.e. an FOI officer, decision-makers and internal reviewers, all appropriately trained, to a sufficient level.

6.4 Management Boards/Management Advisory Committees in public bodies should ensure that their organisational arrangements and appropriate practical supports enable the effective and efficient delivery of FOI.

6.5 Boards should periodically review the performance of the FOI function in terms of timeliness of responses, quality of responses and levels of appeals. Boards should also acquaint themselves with the converging requirements of FOI, Data Protection, Access to Public Sector Information and Access to Information on the Environment.

FOI Officers

As custodian of the gateway for requests, the FOI officer is critical to a public body's performance in this regard. The FOI officer is a focal point for advice and guidance within his/her public body and is the primary contact point with the CPU. By keeping abreast of developments such as CPU advices, OIC decisions and legal precedent, they must enable the public body to be guided by updated knowledge and good practice.

Interpersonal effectiveness is key given that the FOI Officer must maintain good relationships across a range of interested parties (decision-makers, internal reviewers, Management Board, the CPU and the OIC).

6.6 S/he must proactively work with requesters to ensure requests are appropriately focused / targeted and there is clear understanding on the part of the body as to what information is being sought and on the part of requesters as to the issues arising in terms of volume, costs and accessibility.

6.7 FOI officers must liaise actively with decision-makers to secure early engagement in terms of identifying search and retrieval that must be carried out, the estimate of costs and whether a

deposit should be charged; have an ability to provide guidance on search and retrieval fees to requesters and decision-makers alike.

6.8 S/he has a particular role in awareness training within the public body at regular intervals, with support from CPU. S/he must also participate in FOI networks to share learning and expertise and assist in developing common approaches

Decision Makers and Internal reviewers

The Group was clear that the quality of decision making on FOI requests is critically dependent on the FOI competence of decision makers and reviewers.

For this reason it attaches particular importance to the quality of training provided to these groups, as well as the support available to individual decision makers from the FOI Officers.

6.9 The importance of ensuring updated information is available to this group in relation to CPU advice, OIC precedents etc. is also critical and should form an integral part of FOI training generally.

6.10 Internal reviewers should be from a different functional area from the decision-maker.

Networks

The Group noted that a number of Networks had originally been put in place around the commencement of the FOI Act.

These comprised:-

- Civil Service Users' Network (CSUN)
- Public Service Users' Network (PSUN)
- Citizens' Advisory Group
- Education and Health sector networks

There was also an Interdepartmental Group established which focused on FOI policy issues and the chairs of the various networks attended and inputted to its work.

Civil Service Users' Network (CSUN)

This network comprised FOI coordinators from each Government Department. It communicated and met regularly to share information on requests. It focused on practical issues concerning the implementation and administration of FOI across Civil Service Departments and Offices. The purpose of the network was to identify common approaches and promote best practice and compliance by Departments with the provisions and spirit of the Act, to increase awareness of FOI issues, and to act as a networking and co-ordination forum to allow FOI practitioners to operate in an environment which promotes high quality decisions and FOI administration. The Network was chaired by the Department of Jobs, Enterprise, and Innovation and met a number of times per year, as required, to discuss particular issues.

The work of the CSUN generated significant resource demands on the lead chair Department. Against this, the benefits to requesters, public departments and indeed Government were immeasurable in terms of consistency of approach, agreed good practice and shared learning in an otherwise low cost highly efficient model. .

Public Service Users' Network (PSUN)

The PSUN consisted of FOI Officers in public bodies outside the civil service. Representatives were drawn from various public bodies and from other networks. The purpose of the PSUN was to promote understanding of and compliance with the Act and to ensure continued and correct implementation of the FOI Act for bodies outside the civil service. The Network was chaired by the FOI CPU. Its aims were as follows:

- to deepen understanding of FOI among public bodies;
- to identify common approaches and best practices;
- to secure and implement guidance from the Interdepartmental Working Group;
- to assist in the collation of statistics on the nature and volume of FOI requests received; and
- to advise the Interdepartmental Working Group and the CPU in relation to FOI issues.

Citizens' Advisory Group

The Citizens' Advisory Group comprised external interests such as academics, journalists and others. It sought to inform policy makers on issues arising in the implementation of FOI which needed to be addressed. Its role was also to promote the understanding of FOI.

The Group strongly endorsed the re-establishment and animation of these groups as critical. Networks were viewed as inexpensive effective fora for problem solving, shared learning, promulgating good practice and mutual support. The leadership role required by both the CPU and line Departments in supporting networks was emphasised.

When operating effectively the networks provided an open and expert forum for the communication, discussion and resolution of issues relating to the operation of FOI in public bodies. In such circumstances the networks were a key focal point for ensuring a cohesive and integrated approach to FOI in all public bodies, facilitating the exchange of knowledge, information and expertise and leading to on-going and progressive learning for all involved. Networks could meet and examine complex issues and cases and also consider cases from other jurisdictions.

For the future therefore to optimise the contribution of the networks, it will be very important to create and maintain a very close working relationship between them and the CPU in order to ensure that policy development and good practice is fully informed by a knowledge of what is happening on the ground. Similarly FOI within public bodies needs to strongly guided and supported by the knowledge, perspectives and expertise of the CPU. This will be a key issue to be addressed in the development of the Code of Practice.

Recommendations

6.11 The Group strongly endorsed the re-establishment of the networks as inexpensive and effective fora for problem solving, shared learning, promulgating good practice and mutual support. The Group also noted the leadership role required by the CPU and line Departments in supporting networks.

6.12 A very close working relationship between the networks and the CPU is recommended to ensure that policy development and good practice is fully informed by a knowledge of what is happening on the ground. FOI within public bodies needs to strongly guided and supported by the CPU.

The Group also saw a critical role for the Networks in identifying emerging training needs, quality assurance on training procurement and an involvement in direct provision.

6.13 The Group particularly requested that the Citizens' Network be also re-established and chaired by the CPU. Options such as greater flexibility in external representation were touched upon. The value of including NGOs in this Network was strongly endorsed.

6.14 It was also recommended that an annual conference/event should be held to promote dialogue, debate and learning on FOI across user interests and public servants. A university setting was proposed as an appropriate venue, with a possible leadership role for external interests in hosting the event.

END

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**Code of Practice for Freedom of
Information
for Public Bodies**

DRAFT

**June 2014
FOI Central Policy Unit
Department of Public Expenditure and Reform**

Contents

CONTEXT	2
PREFACE	4
OVERVIEW	5
SECTION 1 ROLE AND RESPONSIBILITIES OF THE FOI CENTRAL POLICY UNIT.....	6
SECTION 2 STRUCTURES AND ARRANGEMENTS IN PUBLIC BODIES FOR SUPPORTING FOI	9
SECTION 3 FOI PUBLIC SERVICE NETWORKS	14
SECTION 4 FOI TRAINING	16
SECTION 5 RECORDS MANAGEMENT	19
SECTION 6 PROACTIVE PUBLICATION OF OFFICIAL INFORMATION	20
SECTION 7 KEY ISSUES IN PROCESSING OF REQUESTS	27
SECTION 8 ENSURING THE ACT WORKS EFFECTIVELY	34
SECTION 9 ENGAGEMENT WITH THE OFFICE OF THE INFORMATION COMMISSIONER.....	36
SECTION 10 FOI STATISTICS.....	38

CONTEXT

Fennelly J.¹ cited the long title of the Act of 1997 and found that:-

"the clear intention is that, subject to certain specific and defined exceptions, the rights so conferred on members of the public and their exercise should be as extensive as possible, this viewed, in the context of and in a way to positively further the aims, principles and policies underpinning this statute, subject and subject only to necessary restrictions. It is on any view, a piece of legislation independent in existence, forceful in its aim and liberal in outlook and philosophy."

Freedom of Information (FOI) has since its introduction in 1998 made a major contribution to facilitating access to official information for citizens. It has contributed to a shift towards greater openness and transparency in the conduct of the official activities and in Ireland's administrative and political culture. It has also led to greater accountability in the conduct of public affairs.

FOI is subject to significant challenges. The number, nature and complexity of requests continues to grow. Requests can often relate to sensitive matters. Technology has enabled the creation of electronic records and that has generated challenging issues in terms of record management and extraction of information in response to requests. Requests are made and responses are sought in new formats, and there are legal complexities in the interaction with other legislation such as the Data Protection Acts and other access to information regimes.

The overriding challenge faced by public bodies in delivering the required level of service is staffing constraints, which will remain a key feature of the environment for FOI in the medium-term.

There is an essential requirement both to enhance the overall efficiency of Ireland's FOI regime and to secure a sustained improvement in the performance by public bodies of their responsibilities under FOI.

The Government, in approving the policy approach for restoration and extension of FOI, requested the development of a Code of Practice for FOI to meet these objectives as well as to achieve greater consistency and uniformity of approach by public bodies in their processing FOI requests than is currently evidenced.

The development of the Code and the contribution of both internal and external experts to that process provide excellent scope:-

- to address existing challenges in implementing FOI;
- to strengthen the framework and organisational arrangements for FOI in public bodies;
- to better support the implementation of FOI and to minimise the administrative burden; and
- to better co-ordinate, deepen and widen the expertise and capacity of public bodies in regard to FOI.

¹ Supreme Court case of Sheedy v. The Information Commissioner [2005] 2 I.R. 272

PREFACE

This Code of Practice is being drawn up and published by the Minister for Public Expenditure and Reform under section 48 of the FOI Act 2013.

Section 48 also provides that:-

- the Minister may develop and issue guidelines under the Code; and
- public officials shall have regard to the Code and any guidelines made under it in the performance of any function under the FOI legislation.

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OVERVIEW

The purpose of the Code is to support the achievement of the objectives of the FOI Act to enable members of the public to obtain access to the greatest extent possible consistent with the public interest and the right to privacy to information in the possession of public bodies.

The main objectives of the Code are to:-

- Promote best practice in public bodies in relation to the operation of FOI;
- Guide and inform the performance of public bodies in relation to their responsibilities under the FOI Act;
- Ensure FOI requests are dealt with by public bodies as efficiently as possible to minimise the administrative burden of FOI;
- Secure appropriate consistency and standardisation of approach by public bodies in responding to FOI requests; and
- Provide a framework for appropriate oversight and accountability of the performance of public bodies through monitoring of compliance with the Code.

SECTION 1 ROLE AND RESPONSIBILITIES OF THE FOI CENTRAL POLICY UNIT

A strong, expert and authoritative leadership role by the FOI Central Policy Unit (CPU) in the Department of Public Expenditure and Reform is critical to the effective and efficient operation of FOI in public bodies.

The mandate of the CPU must be to develop FOI policy and to guide, inform and advise public bodies on key FOI policy issues across the public service.

The CPU is responsible in consultation with public bodies and working with the FOI networks for ensuring that the policy and legislative framework for FOI supports the effective operation of FOI in public bodies.

Guidance

- 1.1 CPU manuals, guidance and website are important tools in the successful implementation of FOI and must be kept up to date.
- 1.2 The CPU should maintain the FOI website foi.gov.ie, ensuring that it is up-to-date and contains comprehensive and detailed guidance for the public and public bodies on FOI in Ireland.
- 1.3 The CPU should, in consultation with the FOI Networks, ensure the continued availability of detailed guidance for public bodies on the operation of the Act. This will be particularly important for the new public bodies coming under FOI and support for such bodies should be prioritised by the CPU and the Networks.
- 1.4 The CPU must update and maintain existing manuals on ‘Processing an FOI Request’ and ‘Exemptions and Consultation Procedures’ as well as guidance notes in view of: legislative changes, the use of new technologies by requesters, demands for requests to be released electronically in new formats, the growing complexity of requests and the linkages between FOI and data protection. These may be used to support those undertaking training and subsequently in dealing with requests.
- 1.5 The CPU must keep its guidance on how to handle FOI requests for personal information up to date to ensure there is consistency between FOI and Data Protection legislation and leave no ambiguity for the decision-makers as to the nature of records that may be released and what steps should be taken. It also needs to provide guidance in relation to what constitutes a new record when a request relates to data held electronically in for example, databases and email archives.
- 1.6 The CPU should modernise and simplify the standard ‘model’ letters which were developed at the outset of the introduction of FOI legislation in Ireland to assist FOI bodies in responding to requests. There is a need to ensure plain language is used in such letters and that in responding to requests the relevant section of the FOI Act being relied on by decision-makers is referenced. The rights of appeal² must also be fully explained. However, it should be remembered that these letters are provided to assist FOI bodies.

² e.g. the two layers of appeal; estimated search and retrieval fees may be appealed at no cost internally or further to the OIC if dissatisfied with the decision on estimated costs, etc.

They can and indeed may require to be tailored by individual bodies in reaction to specific situations. While the use of these standard formats enhances the level on consistency in responses they do not purport to have a statutory underpinning.

Policy development and advice

- 1.7 CPU support should be targeted primarily on specific policy issues that cut-across all public bodies rather than in advising on specific cases to public bodies reflecting any weaknesses in capacity in FOI in any public body, unless the case raises a significant policy issue that is relevant for all public bodies.
- 1.8 The CPU needs to develop deeper understanding, expertise and policy dealing with ‘new’ types of requests, promoting of proactive publication policies, and guidance in such areas as records management.
- 1.9 The CPU has a key role in providing evidence based policy advice to the Minister. It must ensure policy making is informed by experience of the implementation of the Act as well as the full administrative cost of FOI.

Dissemination

- 1.10 The CPU should, in consultation with the FOI Networks and public bodies as appropriate, continue to liaise on an ongoing basis with the Office of the Attorney General to obtain and disseminate to all public bodies legal advice on key legal issues relating to the operation of the Act, as well as the Office of the Information Commissioner (OIC) and High Court decisions.

Cost of FOI

- 1.11 The CPU must oversee and ensure a system is in place which will allow the timely and accurate collection of statistics by all relevant bodies.
- 1.12 It must ensure the statistical base has the necessary indicators which will allow it to measure accurately, for example, year on year the growth in and nature of requests, the time spent on processing them, the full cost of processing requests, the number of voluminous requests, the fees charged.
- 1.13 The CPU must ensure that the charging structure in place is clear and that it promotes consistent charging across the system. In performing these roles, the CPU must liaise closely with participants in the FOI networks to ensure that the work of the CPU in this area is strongly informed by practical experience of the legislation.

Networks

- 1.14 The CPU has a leadership role in relation to the networks.

Communications & Training

- 1.15 The CPU is responsible for developing a national framework for FOI awareness, FOI training and communication on FOI.
- 1.16 The CPU should play a central role in standard-setting and quality assurance for FOI training provision (see Section 4).

1.17 The CPU has a role in communicating to the public the responsibilities that exist in relation to promoting Open Government in tandem with the proactive release of information. It also has a role in participating in international networks (e.g. OECD) to ensure that Ireland stays abreast of international best practice and communicates developments and progress made in Ireland.

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SECTION 2 STRUCTURES AND ARRANGEMENTS IN PUBLIC BODIES FOR SUPPORTING FOI

FOI is a core function of the work of public bodies. It ensures that the role, functions and activities of the body are carried out in a truly open and transparent manner. It plays a critical role in maintaining and enhancing public trust and confidence in the individual FOI body and contributes to the overall restoration of trust and confidence in Government. Therefore, it is important that in addition to the FOI Central Policy Unit (CPU), a strong framework must be in place within each public body to support the effective implementation of the FOI Act.

The structures put in place in each public body are pivotal to the effective performance of the public body's in relation to delivering on their commitment to quality in meeting their obligations under FOI as well as minimising the administrative burden of FOI.

Role and responsibilities of the MAC / Management Board

- 2.1It is incumbent on the Management Board / MAC to ensure the necessary structures are in place to support the implementation of FOI in their organisations and that there is effective governance of these structures.
- 2.2It is the responsibility of senior management within each body subject to FOI to promote the objectives of FOI in the context of the performance of the organisation's functions and obligations to the public.
- 2.3The Board must oversee and support the efficient and effective implementation of FOI in accordance with the objectives of the Act and the guidance set out in this Code.
- 2.4The Board must ensure and satisfy itself that there is appropriate governance and organisational structures are in place for dealing with FOI internally, i.e. assignment of operational responsibility to an FOI officer, decision makers, and internal reviewers at appropriate levels and that these officers have the requisite training to enable them to undertake these roles competently.
- 2.5The Board of each public body should ensure that there is an adequate FOI tracking system (whether excel, database or other) in place in public bodies to enable monitoring of progress as well as policy and guidance on records management to support the efficient implementation of FOI.
- 2.6The Board must promote awareness that FOI is part of the core work and overall objectives of the organisation and as such its delivery by the FOI Unit and decision-makers throughout the organisation must be balanced with delivery of other functions.
- 2.7The Board should review annually the capacity and capability of the FOI system of the public body to confirm that the body can meet its obligations under the FOI legislation.

Role and responsibilities of the FOI Officer

While delivery of the Board's leadership role in relation to the delivery of FOI as described above is critical, the FOI officer, as the gatekeeper for the public body's FOI requests and conduit both to the requester and decision-maker, is the linchpin of a public body's capability in relation to FOI.

Expertise and Support

- 2.8 The FOI officer must be given appropriate administrative support in line with the size of the organisation and the volume of requests. He/she should be or be capable of becoming a recognised expert within the organisation on how the legislation applies to the information and records of the public body and have sufficient expertise and experience in dealing with FOI requests.
- 2.9 The FOI officer should have leadership skills and sufficient seniority and capability to raise significant issues with senior line managers and the Board, for example, the handling of specific FOI requests or the systems or capacity of the body to meet its requirements under FOI. He/she should report directly to senior management at least on a bi-annual basis on the performance of the organisation's responsibilities under FOI as set out in guidelines under this Code, including its responsibilities in relation to its publication scheme.
- 2.10 Any other roles and responsibilities performed by the FOI officer should not encroach on their ability to meet the requirements of his or her role as an FOI officer set down in this Code.

Internal Guidance

- 2.11 The FOI officer is a focal point for advice and guidance within his/her public body; and should have an ability to provide guidance on exemptions, applying the public interest test, application and explanation of search and retrieval fees, redaction of data, handling of non-traditional requests etc. The FOI officer should be the first port of call for Decision-makers when seeking advice. If the FOI officer cannot answer the question, then the issue may be raised with the CPU by the FOI officer (or the Decision-maker if the query is very complex/technical). Alternatively, if time permits, the issue may be discussed at a relevant Network meeting and in such cases anonymity of the requester/third party in the recording of the minutes should be maintained.
- 2.12 The FOI officer has a key role in maintaining standards in delivery of FOI through ensuring that there are awareness raising, basic and advanced training courses on FOI provided at appropriate intervals, with support from CPU and external providers as appropriate; as well as keeping abreast of developments and disseminating lessons learned as gleaned from the networks and key decisions of the OIC and case law.
- 2.13 He/she should maintain up to date information on relevant precedents for similar requests received in his or her public body particularly in relation to exemptions sought and including those subsequently confirmed or overturned by decisions of the Information Commissioner and disseminate these amongst decision-makers.
- 2.14 The FOI networks provide an excellent means of sharing learning and expertise and assist in developing common approaches. The FOI officer should participate in relevant FOI networks to realise such benefits and transfer learning to the body.

2.15 The FOI officer is in a pivotal position to inform and contribute to the public body's policy on records management and on the publication (routine or otherwise) of documents and information relating to that body.

Engagement with requesters

2.16 The FOI officer should engage with the requester if he/she is of the opinion that the FOI request is not valid or is not for the public body and work with the requester to clarify the request and/or advise that the request will be transferred to the appropriate public body.

2.17 The FOI officer should develop a strong awareness and knowledge of other access regimes and in particular Data Protection Acts 1998-2003, Re-Use of Public Sector Information Regulations and EC Access to Information on the Environment Regulations so as to be in a position to advise the requester if there is a possibility of obtaining access under alternative mechanisms.

Service standards

2.18 The FOI officer, supported by FOI Network and CPU, plays a central role in the implementation of FOI and must ensure the public body is guided by good practice overall and displays a commitment to quality in responding to requests.

2.19 The FOI officer should advise line management and / or the Board of any steps which s/he believes are necessary to help achieve overall compliance with statutory deadlines for processing FOI requests in order to ensure efficient and timely responses to requests.

2.20 He/she also has a role in supporting the evidence-base for policy-making and should ensure FOI statistics for its public body (and the bodies under its remit as appropriate) are collected and made available on a timely basis.

Contact point / relationships

2.21 The FOI officer is the first point of contact with the public, the CPU and the Office of the Information Commissioner and must liaise effectively and maintain good relationships with these and with all interested parties (decision-makers, internal reviewers, CPU and the OIC).

2.22 The FOI officer should ensure the Public body has a standardised email address and a phone number so that people know they can contact the body to enquire about how to make an FOI application and target their request.

Role and responsibilities of Decision-makers

Build knowledge/expertise

2.23 Decision-makers must have received at least basic training (or have a level of experience of dealing with FOI requests equivalent to have undertaken basic FOI training) and advanced training where appropriate to provide them with a solid understanding of the process and the legislative requirements to enable them to handle requests effectively and apply exemptions and public interest or harm tests, as appropriate and in manner which will minimise the prospect that their decision-making will be overturned on appeal.

2.24 Decision-makers should ensure they have good knowledge of the legislation and any new guidance in relation to processing of requests.

2.25 In addition to the legislation and the provisions contained in this Code, Decision-makers should be aware of what guidance is available both within its own Public body or available centrally from the CPU or the OIC. The Decision-maker should review any guidance which is of relevance to the request.

Engagement with requesters

2.26 The Decision-maker should work proactively with requesters to help them refine requests to ensure requests are appropriately focused and targeted, are not voluminous, do not give rise to excessive administrative demands on public bodies, and that there is clear understanding on the part of the body as to what information is being sought. The Decision-maker should also have the ability to explain search and retrieval fee estimates and appeals mechanisms that are in place to requesters.

2.27 The Decision-maker should ensure early consideration and decisions are made in relation to identifying an estimate of the cost to search and retrieve records and whether a deposit should be charged so as to advise the requester on a timely basis.

Service delivery / standards

2.28 Decision-makers should ensure they adhere to deadlines and engage with requesters and consult third parties as necessary in a timely manner.

2.29 Decision-makers should work collaboratively and co-operatively with FOI officers in dealing with requests and in particular provide responses, estimates of costs and other assistance as necessary on requests that are co-ordinated by FOI officers.

2.30 In complex or difficult cases the Decision-maker should liaise closely with the FOI Officer to identify relevant precedents relating to similar requests received by the body or should refer to decisions made by the Information Commissioner.

2.31 In cases where a request involves non-personal records provided by other public bodies which may appear in the media once released, it is advisable to contact other public bodies to advise them that records are being released so that they may be prepared for any press queries arising. It is also advisable for FOI decision-makers to contact decision-makers in other Departments on related requests for advice and to ensure consistency in approach.

2.32 The Decision-maker should ensure that all records including electronic records that may be relevant to the request are identified and that all staff engaged in the search and retrieval process have a clear understanding of the records that should be extracted for review.

2.33 The Decision-maker shall prepare a schedule of records identified (section 7.22 refers).

Role and responsibilities of Internal Reviewers

2.34 Where an internal review is received, internal reviewers should review decisions made by FOI Decision-makers; and following the review may affirm, vary, or annul the decision in relation to the matter as he/she considers appropriate.

2.35 Internal reviewers must consider cases afresh (de novo) in terms of evaluating the evidence and in terms of any new arguments put forward by the requester, and must adhere to deadlines. The review process is completely independent of the original decision.

2.36 The Internal reviewer must co-operate with the FOI officer, as appropriate, in processing the appeal.

2.37 It is advisable that reviewers should be from a different functional area from the decision-maker and, as required in the Act, be at a more senior level in the organisation.

2.38 There is an onus on reviewers to ensure they have adequate training on FOI and that they keep abreast of developments such as legislative changes, OIC decisions, case law etc.

SECTION 3 FOI PUBLIC SERVICE NETWORKS

FOI networks must provide a robust support infrastructure for FOI and facilitate a consistent approach to the application of FOI across government departments and the wider public sector.

While a number of the networks continue to meet and play a valuable role in sustaining best practice in FOI decision-making and administration, other networks no longer function due in part to resource and time constraints (details of the various Networks in place, their purpose and how they are run will be made available on www.foi.gov.ie).

All networks need to refresh and renew so as to provide the support needed for FOI decision-makers, ensure continuous improvement in FOI structures and procedures and enable best practice to be applied across FOI bodies to the benefit of the public. Public bodies which are coming under FOI for the first time should join the networks to benefit from the support and policy advice given by the networks and the CPU.

The FOI Networks should lead the development of an operational environment for FOI which secures high-quality decision making.

The operational role of the networks is complementary but distinct from the legislative and policy role of the CPU.

A strong leadership role must be provided by the CPU in driving this agenda forward.

Role

- 3.1 The networks should seek to secure an appropriate consistency and uniformity of approach to operational FOI issues;
- 3.2 The networks are responsible for co-ordinating the response to FOI issues that may affect a number or all public bodies participating in any particular network;
- 3.3 The networks should ensure that policy and legislative developments are fully informed by operational realities; and
- 3.4 The FOI Networks should promote FOI awareness and best practice and compliance by FOI bodies with the obligations and responsibilities of public bodies under the Act.

Expertise and knowledge sharing

- 3.5 The networks must act as a key focal point for ensuring a cohesive and integrated approach to FOI in all public bodies, facilitating the exchange of knowledge, information and expertise and leading to on-going and progressive learning for all involved.
- 3.6 Networks should examine complex issues and cases and also consider cases from other jurisdictions. They must play their role in developing, supporting and promoting best practice in terms of the operation of the Act.
- 3.7 Networks must operate effectively to provide open and expert forums for the communication, discussion and resolution of issues relating to the operation of FOI in FOI bodies. This would include practical matters such as sharing ideas in relation to

handling of non-traditional requests, linkages with other enactments and resolving difficulties imposed as a result, best practice in publishing disclosure logs and information routinely requested etc.

Advice and Guidance

3.8 The FOI Networks should provide a forum for providing advice and guidance to FOI officers on a range of matters including legal advices from the Office of the Attorney General, OIC findings and High Court decisions as well as sharing experience and lessons learned on an on-going basis.

Informing policy development

3.9 The Networks should develop and maintain a close working relationship with the CPU in order to ensure that policy development and consideration of legislative change is fully informed by a strong knowledge of what is happening on the ground and that the FOI work of public bodies is strongly guided by the knowledge, perspectives and objectives of the centre.

3.10 The CPU can derive very substantial benefit from obtaining feedback on operational matters from the chairs of the other networks which can in turn feed into policy-making and guidance on cross-cutting issues as appropriate. The CPU can develop policy approaches as well as promote best practice in record management, publication policy and so on.

Guidance / Training role

3.11 While the CPU and the networks have distinct roles, their work should complement each other in that the networks are in a position to provide local support and practical guidance in the first instance thus assisting in addressing local sectoral specific issues with common approaches and solutions.

3.12 The networks also have a role in determining specific sectoral training requirements and should cluster together in relation to the provision of training as appropriate. They can play a vital and inexpensive role in developing and sustaining best practice in decision-making for their sectors.

Participation in other Networks

3.13 The chairs of the various FOI networks should attend the Public Service Users' Network, once re-established, to benefit from shared experiences and learning of other networks as well as to be updated from the CPU on FOI policy developments, new legal advices, guidance, decisions etc.

3.14 The CPU should chair the Public Service Users Network, as well as providing secretarial support to it, and is responsible for steering the agenda of the network forward.

SECTION 4 FOI TRAINING

The fundamental prerequisite to achieving an excellent FOI regime is appropriate training for all personnel involved in dealing with FOI which equips public bodies to fulfil properly their roles and responsibilities under the legislation.

A single training framework for FOI should be developed and adopted across all public bodies.

Advanced training reflecting differences in the needs of different public bodies should be accommodated within this overall framework.

Single Training Framework

4.1 The FOI CPU should prepare proposals for agreement with the FOI Networks on the development of a single training framework for FOI in public bodies setting out for example:-

- the specific content / duration of courses;
- required standard of training and experience / qualifications of trainers;
- recommended delivery model; and
- arrangements for quality assurance of FOI training.

4.2 When such a framework is agreed all FOI training should conform to it.

4.3 The framework should be kept under review.

4.4 The framework for FOI training must accommodate the participation of FOI experts from public bodies in FOI training for public bodies.

Training requirements

Courses

4.5 The training framework should encompass the following:-

- Introductory/basic/awareness course
- advanced course
- Refresher course/Seminars
- Train the trainers course
- Web-based training

Basic

4.6 Basic FOI training would be expected at a minimum to cover the following:-

- an overview of the legislation, the FOI Code of Practice and set out key instructions for participants addressing the processing of requests, the handling of fees, the preparation of decisions, the use of exemptions, timelines, how to handle appeals and submissions to OIC etc.;
- the key principles of FOI and the public interest in providing information the role of FOI officers as their organisation's leaders on FOI;
- formatting of records or files (i.e. pdfs, spread sheets etc.), redacting records;
- use practical case studies and checklists;

- awareness of notable OIC and High Court decisions;
- awareness of Data Protection legislation and the AIE regulations, Re-use of Public Sector Information Regulations;
- use of tracking systems and recording of FOI statistics; and
- key guidance and resources available.

Advanced

4.7 Advanced training should include:-

- the proper application of the public interest test and harm tests;
- dealing with commercially sensitive/confidential requests, Cabinet records, etc.;
- dealing with personal information requests (deceased records, next of kin issues, amendment of records etc.);
- dealing with requests seeking information/records in non-traditional format, redacting, any notification requirements; and
- linkages with Data Protection, Re-use of Public Sector Information and Access to Information on the Environment Regulations.

Supporting the training courses

4.8 The updated CPU manuals should be further developed and adapted in-house in the FOI bodies with assistance/guidance of the CPU to tailor them to the specific issues that arise in the public bodies given the nature of their functions as the business of no two bodies is identical.

4.9 The CPU should update its training course slides and make them available for use by FOI officers and Decision-makers. This would be in addition to the guidance already available and guidance to be developed in the future by the OIC. Such guidance could form the backbone of any basic training course to be delivered by bodies or indeed decision-makers could review the slides themselves to refresh themselves.

4.10 The training system should be linked to developments in related areas including for example, records management, ICT developments.

4.11 Decision-makers should use decisions of the Information Commissioner and case law as useful reference points which should in turn form a body of precedents. Guidance notes published by the OIC should also be used to assist decision-making.

4.12 The CPU should develop and provide an IT based helpdesk service (an extranet) which would enable FOI officers to log relevant queries relating to significant issues to which CPU would respond and to which all FOI officers would have access to share learning. The IT based helpdesk service should be the first port of call for FOI Officers if consistent implementation of the FOI Act is to be achieved. It should however be supported by the phone help facility and the Network meetings as appropriate. Guidance will be developed on use of the IT based helpdesk, once in place.

4.13 An electronic newsletter issued on a regular basis by the CPU would also help underpin the FOI training by ensuring the widest possible sharing of relevant up-to-date information on FOI issues.

4.14 The CPU should ensure that bodies coming within FOI for the first time are fully linked into the FOI training model.

4.15 In view of their expertise and experience in FOI, the CPU should make proposals for how the networks can support the development of the FOI training model.

Delivery of Training for existing bodies

4.16 FOI training should be included within any shared service model for learning and development put in place for the civil service.

Delivery of Training for new bodies:

4.17 Relevant line Departments, the CPU and the Office of the Information Commissioner (OIC) should work together to ensure senior management (and Board members if relevant) of public bodies subject to FOI for the first time are properly briefed on, for example, the obligations under the Act and the principles it aims to achieve, of the structures (FOI Officer, decision-makers, internal reviewers) that will need to be put in place as well as the need for a tracking system, a system to ensure good records management, a need to draw up and implement a publication scheme and that staff training will be required.

4.18 Over time, these bodies will need to develop their own guidance on specific issues arising for them from FOI.

Standards in training provision

4.19 In order to ensure quality assurance and high standards in external training provision, the CPU should in accordance with procurement rules tender for and establish a panel of qualified service providers which it is satisfied can meet FOI training needs thus ensuring consistency in standards, approach and core messages.

Resourcing

4.20 FOI officers and the CPU have a key role to play in ensuring the provision of training. Senior Management must be cognisant that there will be resource implications – the FOI Officer may be required to be a full time post in some organisations and time will need to be made for FOI which must be seen as part of the core work.

SECTION 5 RECORDS MANAGEMENT

5.1 The Department of Public Expenditure and Reform should review and update existing guidelines on records management. The guidance could set out:

- the range of activities from prescribing record formats and document/forms design, through the development and operation of record-keeping systems by:
 - analysis of organisational functions to determine where records should be captured;
 - developing records classification schema; and
 - monitoring records capture and record-keeping activities.
- the processes required for the systematic and efficient control of records creation/receipt, classification, maintenance/storage, destruction and transfer to registry. This should include the formulation and implementation of records retention and disposal schedules and the provision of a record retrieval service.
- the processes required for management of electronic information (including what must be stored as records in relation to emails) and its integration with hardcopy information.
- where archival laws are in place, activities related to the transfer of records of permanent value to archival custody for release to the public (what records must be kept and in what state of preparedness for the archives).

5.2 Records management poses a very significant challenge for public bodies, not least due to the advent and adoption of new information and communication technologies. In particular there is a lack of clarity and knowledge deficits relating to the management of electronic records.

5.3 While records management relates to a broader set of corporate responsibilities than FOI, in order to facilitate the smoother operation of FOI in public bodies, there is a compelling need for sound record management practices and systems.

5.4 The requirements outlined below in relation to records management should be read in conjunction with existing legislation on record keeping under the National Archives Act(s).

Role of the Centre in Records Management

5.5 The Department of Public Expenditure and Reform will examine the case for regulations for the proper management and preservation of records in the care of a Department of State³ as permitted under the National Archives Act, 1986 and advise the Minister accordingly.

5.6 Such Regulations could, for example, provide for:-

- the allocation of corporate and operational responsibility within public bodies for the discharge of records management and record-keeping responsibilities;

³ The National Archives Act does not extend to the full range of bodies that are currently subject to the Freedom of Information Acts, 1997 and 2003.

- following consideration of ISO standards, the adoption by public bodies of recognised standards on records management if appropriate and requiring of compliance by public bodies;
- the formulation of records management and record-keeping guidelines and procedures at organisational level that would seek to integrate technology use and the creation of electronic information into record-keeping systems where required to be captured;
- the formulation of current and relevant records classification schemes within public bodies;
- the development of records retention and disposal schedules; and
- monitoring and demonstrating compliance with standards, guidance and procedures.

Role of public bodies in records management

5.7 The Management Board in each public body should assign management responsibility for records management to a senior member of staff with, or capable of, developing appropriate knowledge and skills to achieve the aims of good records management.

5.8 The Board should ensure awareness of records management guidelines and practices are included in induction and ongoing training of all personnel.

5.9 Each public body should have an overall records management policy statement in place on how it manages its records. This statement should be endorsed by the Management Board who must ensure it is adhered to by all personnel.

5.10 The statement should provide a mandate for the performance of all records/information management functions as well as setting out the body's commitment to create/classify, manage, store, destroy and transfer records for archival purposes.

5.11 Each public body should have detailed records management guidelines in place which conform with the guidelines published centrally but would be tailored to the specific functions of the organisation and the nature of records held.

Use of personal mobile phone/ emails

5.12 Each public body should have guidelines/policy in place on the use of personal mobiles and personal email addresses for work purposes insofar as FOI requests are concerned.

SECTION 6 PROACTIVE PUBLICATION OF OFFICIAL INFORMATION

A much more proactive approach to the publication of official information by public bodies would be expected to reduce the volume of FOI requests by pre-empting requests that would

otherwise arise. Greater publication of official data and information will in any event be further mandated by the revised EU Directive on the Re-use of Public Sector Information. It is also consistent with the Government's commitment to participate in the multilateral Open Government Partnership and in particular its open data objectives.

The adoption of a practice of routine publication of information which might otherwise be the subject of a FOI request will free up staff capacity of public bodies from dealing with FOI requests

Under the FOI Act, FOI bodies must prepare and publish a ‘publication scheme’⁴ in accordance with the “Model Scheme” provided for in the legislation or an amended version that the Minister may prescribe, following consultation with the Information Commissioner, for particular bodies to use as a basis for their own schemes. The Act sets out in broad terms what the publication scheme should contain at a minimum. It provides that the Commissioner may examine and report in her annual report as to whether bodies are in compliance with this requirement.

Routine Publication of Records

- 6.1 Public bodies should publish as wide a range of information as possible on a routine basis outside of FOI and in open and accessible formats. The FOI Act allows for the publication or giving access to records (including exempt records) outside of FOI provided such publication or giving of access is not prohibited by law.
- 6.2 In publishing information, FOI bodies should have regard to the principles of openness, transparency and accountability as set out in section 11 of the FOI Act.
- 6.3 Information which is consistently the subject of FOI requests and whose release is not otherwise restricted should be published proactively, at regular intervals. Such information might include, for example, Ministerial diaries, Ministers’ and special advisors’ travel and subsistence costs and expenses, certain details in relation to procurement, information relating to public consultations, etc.
- 6.4 Payable Orders in excess of €20,000 (or such lower amount as may be determined) should be published on a quarterly basis.
- 6.5 A systematic management process or policy in relation to proactive publication should be developed based on the monitoring or tracking of the nature of FOI requests received over regular intervals.
- 6.6 Information should be regularly and automatically published in relation to public procurement competitions as follows:
 - Name of winning contractor/organisation;
 - Value of the contract;

⁴ Publication schemes are regarded as good practice in FOI in other jurisdictions as a means of disseminating information relating to functions and activities of public bodies.

- What the contract is intended to achieve/will deliver; and
- Duration of contract and expected completion date.

Publication Schemes

6.7 Publication schemes should be readily accessible and prominently published in the FOI part of the website. Schemes should be crisp and clear setting out the nature of the information the organisation publishes. The information/documents in question would be published throughout the website of the organisation.

6.8 Each public body's publication scheme should provide for the publication of extensive information on its nature, role, responsibilities and activities including the following. The information to be published as part of each FOI body's publication scheme must at a minimum include the following under each information heading (in cases where a particular item is not applicable to a particular FOI Body a short note should be provided explaining the reasons):-

Basic information on the FOI body:

- details of the legislative (or other) basis underpinning the establishment of the FOI body, registration details and copies of Memoranda and Articles of Association where applicable etc.;
- the structure of the FOI body in terms of Divisional/functional areas by way of an organisation chart (at least as far as AP level or equivalent);
- internal policies and any operational and/or governance arrangements/procedures in place;
- accountability arrangements including reports to regulators, internal and external Auditors;
- information that is sought on a regular basis – that would not be exempt under FOI; Such information should be published proactively, at regular intervals and might include, for example, Ministerial diaries, Ministers' and special advisors' travel and subsistence costs and expenses;
- where charges are payable for publications prepared for sale on a commercial basis and sold through a retail outlet e.g., bookshop, museum or research journal, details of the cost and where the publication may be purchased;
- details of the FOI bodies Disclosure log in relation to non-personal requests (see further details below);
- Where applicable details of board membership, vacancies and method of appointment; and
- contact points, addresses and locations.

Functions and Services Provided:

- Mission Statements, Corporate Plans etc.;
- details of the nature, role, responsibilities and activities of the FOI body;
- details of services provided by the body including how such services may be accessed and/or applied for;
- Details of any fees or charges for availing of services; and
- strategy and policy for delivering functions and services.

Decision Making Procedures:

- Circulars/guidance/procedures/rules for the purposes of decisions, determinations or recommendations under or for the purposes of any enactment relating to any scheme implemented (e.g. involving grants) with respect to rights, obligations, sanctions etc. to which the public is or may be entitled; or services provided including how such services may be accessed;
- Customer Codes or Charters where applicable; and
- any rights of review or appeal in respect of decisions made by the body.

Financial Information:

- Financial Statements including annual accounts and any regular update statements;
- Details of spending on capital projects (where applicable);
- details of expenditures over an agreed threshold;
- Board Member remuneration (where applicable);
- Expenses policies and procedures; and
- Pay and grading structure.

Procurement:

- Procurement policies and procedures;
- Details of current tender competitions; and
- Information in relation to completed public procurement competitions as follows:

- information about the procurement of goods and services;
- Name of winning contractor/organisation;
- Value of the contract;
- What the contract is intended to achieve/will deliver; and
- Duration of contract and expected completion date.

Performance:

- Annual reports;
- Performance indicators and performance against them;
- Evaluation reports; and
- Internal Audit/C&AG or other external reports and reviews.

Publication schemes prepared under section 8 should be readily accessible and prominently published in the FOI part of the website. Schemes should set out the nature of the information the organisation publishes grouped under readily understandable headings. The information published through this scheme should, wherever possible, be available on the FOI Body's website or through links to other freely accessible websites. There must be an alternative arrangement for people who do not want to, or cannot, access the information either online or by inspection at the Body's premises.

6.9 Consistent with the legislative requirement, a written copy of the publication scheme should be maintained in the head office of each organisation.

6.10 The publication schemes should be reviewed periodically to ensure they are up-to-date. Publication schemes should be revised if appropriate following any revisions of the above guidelines by the Minister or where the Minister prepares model publication schemes for particular bodies or classes of bodies to ensure the schemes are in conformity.

6.11 All FOI bodies must confirm in writing to the relevant Government Minister within 6 months of section 8 of the Act commencing that they are in compliance with section 8 and have published the publication scheme and information in that regard.

6.12 Information/records published under the publication scheme should be reviewed and kept up to date as appropriate.

Disclosure Logs

6.13 Disclosure logs in relation to non-personal requests should be published on a regular basis (e.g. quarterly). This requirement to publish details only applies to non-personal requests **under no circumstances should any details of personal requests ever be published**, whether they are received from individuals themselves or on their behalf as provided for in the legislation. This does not prevent the publication of summary information in relation to the number of such requests (including the number of parts of each request) received for statistical purposes.

6.14 The log should provide summary information of accepted/valid requests:-

- Date of request;
- Name of the requester (other than when the request applies exclusively to the requester's personal information);
- The request (categories of records sought) or link to actual request letter;
- Decision made: whether it was granted in whole or in part, or refused; and
- Date of release.

6.15 Notification of requesters: The standard letters of acknowledgement to requesters should be used as an opportunity to apprise requesters that their requests (including the name of the requester) will be placed on disclosure logs and that non-personal records released will be published. The letter should make it clear that the disclosure log policy does not apply to requests for personal information.

6.16 When undertaking third party consultations on the release of information subject to an FOI request, the third party should also be apprised of the possibility of the record being made available through a disclosure log and published if released under the request.

6.17 An organisation should publish the non-personal records it releases (in whole or in part) in response to the requests it has received. There is a need to ensure that:

- privacy rights are not infringed;
- persons are not subject to commercial disadvantage through the inadvertent release of records;
- exempt information is not published erroneously;
- publication of material on websites is operated on an equitable basis i.e. it would not be appropriate to single out any particular users of the Act for selective publication;
- The Office of the Attorney General has made it clear that in publishing material released under FOI, a public body should allow a requisite time to elapse before publication to allow for the possibility of a review or court appeal (see also CPU guidance note number 21 - Guidelines in relation to the Display of FOI Requests on Websites); and
- records, if any, released under FOI and published should be provided in open accessible formats where possible.

6.18 All FOI bodies should provide a link to its disclosure log to the CPU who will make such links accessible centrally.

Good practice in web publication

6.19 Information should be readily found on websites, for example, by enabling search functions and having an alphabetical directory as well as tree structures.

6.20 Guidance on the format, layout, style etc. of how information should be published is a matter for the ICT Unit or Communications Unit of individual FOI bodies.

6.21 The profile of FOI should be raised on the website of each FOI Body with FOI being easily found on the home page. FOI bodies must ensure that they clearly set out on their website in FOI area details on accessing information including instructions on how to make an FOI request, how such requests will be processed and what procedures are available to requesters if they are unhappy with response.

6.22 FOI bodies must ensure that information may be made available to people who cannot access the internet. This may be achieved by offering to print out information from the website following a request.

6.23 There should be standardised email addresses for FOI officers in each public body and standardised contact formats (e.g. foi@taoiseach.gov.ie) instead of using personal email addresses as is the practice in some public bodies. The phone numbers of FOI officers/Unit should also be made available.

SECTION 7 KEY ISSUES IN PROCESSING OF REQUESTS

Notwithstanding the modernisation of the legislation, FOI legislation is complex and dealing with FOI requests can be challenging requiring FOI Officers, Decision-makers and Internal Reviewers to determine new and finely balanced issues relating to the release of records.

Only a very small number of cases are usually appealed to the Information Commissioner (i.e. less than 2%). Of the 258 FOI reviews completed by the OIC in 2013, 40% were affirmed, 25% were withdrawn, 11% were annulled, 7% were varied with the remainder of the appeals settled or discontinued. While these returns indicate by and large that initial decisions were good, there is significant scope for improving the processing of FOI requests, by for example adhering to timelines for responding to requests, greater transparency on the basis for and consistency in the charging of search and retrieval fees, more information on rights of appeal, greater consistency in the application of exemptions with documented evidence of the consideration of the actual injury likely to arise from release, or of the balancing of the public interest test in the disclosure.

Dialogue and communications between public bodies and requesters could be improved and public bodies should be encouraged to engage with requesters to help them refine their requests. Provision of contact details should be standardised and letters of reply need to be simplified in terms of the language used, improved in terms of the information provided and updated.

It is also essential to achieve greater consistency on the handling of multifaceted requests and voluminous requests to reduce the administrative burden of FOI.

General handling of requests

Comprehensive and detailed manuals for decision-makers on all aspects of processing FOI requests are maintained by the FOI CPU and include information on appeal procedures, and on applying exemptions and third party consultation procedures.

These manuals are currently available at www.foi.gov.ie and will be appended to this Code once updated.

The guidance provided in this section is additional to that covered in the manuals and is intended to cover new developments pending updating of the manuals.

On receipt of request by FOI Officer

Validity

7.1 The FOI officer should check to see if request is **valid**, i.e.

- the request is made under the FOI Act;
- the records sought are likely to be within the remit of the Public body;
- the request is not considered voluminous⁵; and
- the request contains sufficient particulars in relation to the information concerned to enable the records sought to be identified by taking reasonable steps.

Acknowledgement

⁵ If the request is considered voluminous, see procedures set out in Section 8.

7.2 If in the FOI officer's view the request is valid, the FOI officer should issue a standard acknowledgement of the request giving timescales for the decision, information on who will process it, the deadline for issue of the response and that a review may be sought if no response is received by that date. The request is then sent to the relevant section for processing.

Searching and retrieving records and fees

7.3 When the Decision-maker receives the file, he/she must as a first step assess whether any search and retrieval fees will apply. Where search and retrieval fees apply, he/she must advise the requester on the level of search and retrieval fees, how they are calculated and how much of a deposit (if any) is required within two weeks of receipt of the request (if not earlier). The Decision-maker should offer the opportunity to the requester to refine the request with the aim of reducing or eliminating the search and retrieval fees and offer to assist them in this process if required.

7.4 If search and retrieval fees apply and a deposit has been sought and received, the decision-maker, who must be appropriately trained and have access to guidance on FOI, must be cognisant of and comply with timelines in processing the request (noting that the clock stops from the date the deposit is sought until it is received). Work should begin as soon as possible after receiving the request in searching for and retrieving relevant records.

7.5 The activities that can be charged under search and retrieval are limited to those that a public body can reasonably expect to incur in:-

- Determining whether it holds the information requested;
- locating the information or documents containing the information;
- retrieving such information or documents;
- extracting the information from the document or other information source containing both it and other material not relevant to the request; and
- scheduling the relevant records to prepare them for consideration.

The decision making process and the cost of redacting relevant but exempt information may not be taken into consideration.

7.6 Final Search and Retrieval and copying costs should be recalculated at decision time to reflect the number of actual records being released. Any deposit already paid is offset against the full cost.

7.7 Where search and retrieval and copying charges to be levied are estimated to be below the minimum threshold level to be prescribed in Regulations (€100), no search and retrieval and copying charges will be levied thus providing uncharged search, retrieval and charging time for the requester and promoting focussed requests. Where search and retrieval and copying costs are estimated to be above this level but below an upper limiting cap to be prescribed in Regulations (€700), no free time is given and the full search and retrieval and copying cost must be charged subject to a maximum level to be prescribed in Regulations (€500).

7.8 Where the search and retrieval and copying charges to be levied are estimated to be over the upper limiting cap to be prescribed in Regulations (€700), the requester will be advised of this by the Decision-maker and invited to refine his/her request to bring the cost below

the cap. If the requester refuses to refine the request in this manner – i.e. bringing the estimated cost below the upper limiting cap, the public body may refuse to process the request. If the public body chooses to process the request, the €500 max charge will **not** apply and the requester will be required to pay the full cost of the search and retrieval charges. In any such cases a deposit must be sought and received in advance of any further processing of the request.

Processing the request

Third-party consultation

7.9 If **third-party consultation** is required, the decision-maker must advise the requester and invoke the additional three week period for making the response. The decision-maker must adhere to the timelines for carrying out third-party consultation. The public interest in releasing the information must be considered.

Public interest

7.10 A Public Interest Test provided for in sections 29, 30, 32, 35, 36, 37, 39 and 40 of the legislation. This requires the decision-maker, in examining the records deemed relevant to the request, to take the public interest into account, *inter alia*, the need to achieve openness, transparency and accountability in decision-making, the right of the people to be aware of and participate in the decision-making process which affects them and the public interest and safety generally.

7.11 When a public interest test is applied to requests for information, details as to the examination of the public interest, how the test was applied and all relevant factors taken into account should be provided in the letter of response.

7.12 FOI CPU should following consultations with the FOI Network develop guidance on the application of public interest tests in considering the release of records falling under the exemptions in the Bill.

Sensitive information

7.13 If the decision-maker considers that any or all of the information sought should not be released in full or in part, the decision-maker should review guidance available on the exemptions in the Act and apply them as appropriate.

7.14 Given the sensitivity of Cabinet records or records relating to international communications, it is essential that exemptions where applied are applied consistently (see below). In the case of any request which may give rise to the release of Cabinet records, there must be prior consultation with the Cabinet Secretariat in the Department of the Taoiseach.

7.15 If the decision-maker decides to release information which he/she considers may be politically sensitive, he/she should bring this to the attention of more senior management and the press officer as early in the process as possible.

Providing the response

Decision letter

7.16 The Decision letter sets out the procedure with regard to the right to appeal via internal review and the right of appeal to the Office of the Information Commissioner.

7.17 In responding to the requester, the Decision-maker (or the FOI officer if co-ordinating the response) should set out clearly:-

- the decision using simple language avoiding legal jargon;
- the number and nature of records considered;
- the specific factors taken into account (including in the public interest) in making the decision;
- the actual search and retrieval cost (deducting any deposit paid) and on receipt, the records and response should issue. A breakdown of the search and retrieval fees must be provided (hourly charges and an explanation of costs); and
- a schedule should be attached providing details of those records being released in full, of those to which partial access is being given and of those being refused and setting out the reasons why access is not been granted in full or in part and referencing relevant sections of the Act where refusals are made.

Electronic service

7.18 The FOI Act sets out at 17(1)(c) that access to records may be given to requesters in searchable electronic form where records are available in that form subject to section 17(2) which sets out circumstances where a head should not give access in such form. Requesters should be able to submit an FOI request online to the relevant FOI body, and where practicable and provided records are available electronically, receive any information ultimately released electronically in a searchable and re-usable form, if that is their preference. Where personal information is requested online, the requester must provide proof of identification and satisfy the decision-maker of his/her identity.

7.19 Section 17(4) of the Bill sets out the responsibility of FOI bodies in relation to requests relating to data contained in more than one record held electronically by the body (e.g. a database or an archive of emails). Bodies are required to take reasonable steps to search for and extract such data using the search and extraction facility it has available and uses in the ordinary course of its functions. Bodies are not required to develop new programmes/code to interrogate databases. The Act provides for access to records which are in existence and does not require the creation of new records. However in order to provide access to the extracted data from electronic records or parts of records, for convenience bodies may reproduce the relevant data in a new record and in such cases the record shall be deemed to have been created on the date of receipt of the request.

7.20 Where requests comprise ‘data dumps’, such requests should be examined and the information provided in searchable electronic form provided the request is not deemed voluminous and the information is considered appropriate for release.

7.21 Where possible, the public body should facilitate the requester in making any payments electronically in respect of the requests and in the provision of any refunds by the public body (it is accepted that requesters may refuse to supply bank details or may have no bank account).

7.22 Best practice would suggest that all official emails should be sent through official email accounts, which may be accessed remotely from anywhere with an organisation’s IT unit. In this way, there is full traceability of official documents/correspondence. Where private

email addresses are used for exceptional reasons for work purposes to communicate official information, such information should be treated as a record for FOI purposes.

Assistance to requesters with a disability

7.23 In addition to assisting the requester in identifying the records required (refining the request) the body is obliged to assist persons with a disability in exercising their rights under the Act. (See CPU Guidance Note No. 17 Assistance to Persons with a Disability in exercising FOI rights⁶).

Requests for personal information

In the normal course, search and retrieval and copying charges are not imposed. Further details are available in the legislation and in the manuals and guidance available under this Code.

Amendment of records

7.24 Guidance is available in the Decision-makers manual in relation to processing requests for amendment of records detailing the level of proof required etc.

Requests for medical records

7.25 Where medical records are sought, as a first step the requester must provide proof of identification and satisfy the decision-maker of his/her identity as the person to whom the records relate; or provide proof on relationship, i.e. next of kin.

7.26 Where medical records are considered appropriate for release but the Decision-maker is concerned that release of the records would impose a health risk to the requester, he/she should consult with a clinical medical person where available to the organisation or ask the requester to nominate a clinical medical person to whom the records may be released to enable the medic to make the decision.

Records relating to deceased persons

7.27 Existing policy and practice will be reviewed regarding release of records relating to deceased persons to ensure clear guidance is available clarifying:-

- Who is the next of kin;
- Whether all the next of kin have the same rights;
- How to proceed if some next of kin want records released and others do not;
- How to proceed if the personal information had been given in confidence – whether it should be released to next of kin or exempted; and
- Standards of what is required as proof of being next of kin (e.g. death cert, marriage cert, birth certs of children, etc.).

7.28 Existing policy / practice will be reviewed in relation to the steps to take where there is a dispute between next of kin in the case of records relating to deceased persons or where a child or elderly parent is involved and guidance will be developed as appropriate.

⁶ <http://www.finance.gov.ie/viewdoc.asp?fn=/documents/foi/cpunot17.htm>

Relationship between FOI and Data Protection (DP)

7.29 Rights conferred under Data Protection Acts shall not prejudice rights conferred by Freedom of Information. There are a number of differences⁷ between the FOI and DP processes which make it difficult to operate under both but the Data Protection Commissioner and the Freedom of Information Commissioner cooperate and provide assistance to each other in the performance of their respective functions. In addition clarity is needed regarding collateral information about third parties or provided by third parties or joint personal information in terms of when one should consult in relation to such information (DP provides that no third party information should be provided whereas under FOI it is permitted). In consultation with the relevant regulators and FOI officers, the CPU Notice 23 will be updated/revised to provide greater clarity on:-

- whether requests should be processed under FOI or under Data Protection;
- how to handle third party information;
- when personal information should be released outside the FOI and DP Acts as practices differ in different bodies in the health sector; and
- whether exemptions be considered notwithstanding records are being released outside the Acts.

Rotunda Judgement implications for exempt records⁸

7.30 In considering whether personal records should be released, the underlying presumption should be that the Act creates a general right of access to records and that the exemptions provide for exceptions to this general right. In applying these exceptions to the general right, the presumption should be that the right of access would be set aside only where one of the exemptions very clearly supports a refusal of access. This is in line with the Long Title and also the need to have regard to the principles of openness, transparency and accountability as set out in section 11(3) of the Act.

Requests relating to Cabinet records

7.31 CPU notice 25 sets out clear procedures in relation to handling of requests where Cabinet records are being considered for release and this notice must be followed. In particular where the release of any material contained in a Government Memorandum is under consideration, prior consultation with the Government Secretariat is mandatory.

7.32 Once the five year exemption period for the release of substantive material contained in Cabinet records has expired, the question of release only arises in circumstances that the relevant material does not fall under any of the other exemptions available in the legislation subject to whatever public interest tests apply to those exemptions. CPU notice 25 sets out examples of records that might attract such exemptions.

7.33 Under no circumstances should elements of records be released which reveal the content of Cabinet discussions or from which Cabinet discussions may be inferred.

⁷ e.g. timeframes for response differ; there are different appeals processes and agencies; a review of medical records by medical professional is required in the case of DP but is not required under FOI.

⁸ Following the Supreme Court judgment of July 2011 in *Rotunda Hospital and the Information Commissioner* there is uncertainty regarding the process for establishing that a record is an exempt record and thus not to be released under the Act.

7.34 The CPU notice sets out procedures to be followed including notification of the Government Secretariat in the Department of the Taoiseach, and provision of details of records held and proposed for release, to give an opportunity to provide observations.

7.35 The relevant notice will be updated to take account of the new Bill, i.e. reduction in the restriction from 10 years to 5 years, restoration of the definition of Government etc.

Requests relating to International relations records

7.36 Detailed guidance is provided in CPU notice 18 in relation to handling of FOI requests that might impact on international relations which provides among other things that “Where a deciding officer is unsure whether an adverse effect ... might arise or if a record is within subsection (2), consideration should be given to consulting the Department of Foreign Affairs, in relation to external relations matters.....”.

7.37 Guidance is provided on what to take into account in considering the request as well as steps to take to ensure interactions with public bodies in other countries are not prejudiced by FOI.

7.38 Where material can be published and made available routinely, this should be done.

7.39 An appendix to the notice sets out the main provisions of the regulations on public access to the European Parliament, the Council and the Commission and provides detailed guidance on the approach to take in relation to records relating to these.

7.40 The notice will be updated to take account of the amendments proposed in the new Bill.

FOI used as a precursor to orders of discovery

7.41 The High Court Judgement of O’Neill J. on 04/04/01 envisages ‘a rational and harmonious co-existence between the two regimes of disclosure’. There are exemptions in the Act which may be used if there is a concern that release of records would prejudice court proceedings.

SECTION 8 ENSURING THE ACT WORKS EFFECTIVELY

It is widely recognised that the processing of FOI requests can impose a formidable administrative burden on public bodies. At times large and complex applications are received from categories of applicants who use the FOI Act as the main means to obtain information (e.g. law firms that use the FOI Act as a form of discovery, journalists, the media and researchers) and, regardless of the intentions or bona fides of the requester, such requests may be oppressive in terms of the resources and time demanded by compliance. Inherent in the policy is the idea of proportionality. It is important that there is an appropriate balance between the benefits to the public of providing the information sought against the time and resources that would be needed to provide it and the benefits to the public of the provision of other services. For this reason, FOI requests may be refused in certain circumstances on administrative grounds. As with all decisions, there is a right to appeal.

The record does not exist or cannot be found

- 8.1 If the records sought either do not exist or the records cannot be found upon the taking of reasonable steps, the request may be refused.

Information otherwise available outside FOI

- 8.2 If the information was provided in the past under FOI or outside of FOI (if it would be usual practice to provide such information), then the Decision-maker should advise the requester that the information may be provided outside of FOI if the requester agrees, with the appropriate reproduction fees applying, if necessary.
- 8.3 If the information may be available free of charge under the Re-use of Public Sector Information Directive or under the Access to Information on the Environment Regulations, the Decision-maker may advise the requester of the potential to retrieve the information through these alternative mechanisms.
- 8.4 If it is the case that the information sought is already in the public domain (or will be within 6 weeks of receiving the request), the request may be refused.

Voluminous Requests

- 8.5 A request should be treated as **voluminous** under the legislation if it would give rise to an administrative burden on the public body to the extent that it would disrupt the work of a specific functional area. This includes requests comprised of more than one part involving different (unrelated/distinct/discrete/separate) matters the combined effect of which would be to give rise to an administrative burden on the public body to the extent that it would disrupt the overall work of the public body.
- 8.6 Where in the Decision-maker's view the request is voluminous, the Decision-maker should contact the requester and assist them in the refinement of his/her request so as to enable identification of the information sought.
- 8.7 If the requester does not refine the request after assistance has been given, the request may be refused and the requester must be advised of the right to seek an internal review of that decision.

8.8 The FOI officer may seek the advice of relevant Decision-makers on whether the request is voluminous if he/she has any doubts.

Request unclear or frivolous or vexatious

8.9 If in the decision-maker's opinion the request does not contain sufficient particulars in relation to the information concerned to enable the records sought to be identified by taking reasonable steps, the Decision-maker must give the requester an opportunity to clarify the request. If the requester fails to do so, the request may be refused.

8.10 If in the Decision-maker's opinion the request is frivolous or vexatious or forms a pattern of manifestly unreasonable requests from the same requester or from different requesters acting in concert, the request may be refused.

A deposit has not been paid

8.11 Requests for non-personal information may be refused where a deposit has not been paid in respect of search, retrieval and copying of records.

Search and Retrieval charges

8.12 As set out in chapter 7, where the search and retrieval charges to be charged would exceed the upper limiting cap to be prescribed by Order, the public body should ask the requester to refine his/her request. If the requester fails to do so, the request may be refused.

SECTION 9 ENGAGEMENT WITH THE OFFICE OF THE INFORMATION COMMISSIONER

Engagement between public bodies and the OIC

Strong communications and positive and constructive engagement between public bodies (FOI officers and the CPU) and the OIC is absolutely essential to enable FOI to work effectively.

A number of important steps could be taken by public bodies to enhance the efficiency of the appeals undertaken by the Information Commissioner. This would include timely provision of files/records, compliance with the required time-frames etc. The submissions should set out the case for the decision made by a public body and justify use of exemptions and schedules of records should be provided.

Future role of the OIC

The OIC should consider identifying the public bodies which perform well, i.e. demonstrate a good understanding of the Act through effective use of exemptions, consideration of public interest and harm test factors, provision of well-argued cases and timely and good decisions which stand up under review. The OIC should showcase these on its website to promote good practice across the public sector.

The OIC might contribute where appropriate, to the development of guidance notes by the CPU. As is the case in these other jurisdictions, this could be achieved without compromising the independence of the Information Commissioner in decision-making on appeal cases.

In other jurisdictions, the OICs have a critical role in providing guidance to public bodies on the functioning of the Act. Serious consideration should be given by the OIC to adopting such a role as well as contributing, where appropriate, to the development of guidance notes by the CPU. As is the case in these other jurisdictions, this could be achieved without compromising the independence of the Information Commissioner in decision-making on appeal cases.

Guidance

- 9.1 The OIC should publish all decisions so that both requesters and FOI officers are aware of recurring issues that may arise in terms of the application of the Act. This would act as an important reference point for both parties and would serve as a means of developing the knowledge and understanding of public bodies of OIC decisions.
- 9.2 The OIC should take a more active role in providing guidance to public bodies to promote more effective and efficient implementation of the Act. This should include identification of public bodies which perform well in processing FOI requests and promoting their practices as good practice generally. Publication of guidance notes on the exemptions and OIC decisions made in that regard could prove useful.
- 9.3 The OIC should ‘name and shame’ public bodies in its annual reports where the initial decision-making is found to be consistently of poor quality.
- 9.4 The public bodies should provide the necessary statistics early each year to the OIC to enable it to publish the statistics relating to the implementation of the FOI Act on a timely basis.

9.5 Public bodies should comply with the required time-frames for the provision of files/records to the Information Commissioner. The submissions should set out the case for the decision made by a public body and justify use of exemptions. Schedules should be included with submissions listing records which were considered, as well as those which the decision-maker decided should be released or refused in whole or in part.

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SECTION 10 FOI STATISTICS

Best practice

What should be monitored?

- 10.1 The FOI CPU will issue a guidance note on the statistical requirements for FOI and the systems which need to be put in place to meet these reporting requirements as efficiently as possible.
- 10.2 Monitoring activities should be proportionate to the volume of requests handled by a Public body but should include collecting information about:
 - the number of requests received;
 - the proportion of requests answered within statutory timescales (there may also be value in monitoring the length of time it takes to respond to overdue requests);
 - the number of requests that have been refused and the reasons for the refusal;
 - the number of requests for which SRC fees were charged and what the charge was;
 - the numbers of reviews that have been carried out and the outcome of such reviews;
 - the number of cases that are appealed to the Information Commissioner and the outcome of such appeals; and
 - the time required and cost involved in processing FOI requests.
- 10.3 Public bodies should as a matter of routine publish and update their FOI monitoring data online.
- 10.4 Public bodies (particular those that are large, or geographically dispersed) should consider developing a tracking system to monitor the progress of current requests, ensure deadlines are met, and ensure consistent handling.

Review of request-handling information

- 10.5 Public bodies should review at least on an annual basis the information and statistics they collect on their performance in handling FOI requests reporting to their Management Board.
- 10.6 This exercise should be used to identify areas where performance or other efficiency improvements could be achieved, for example in meeting the statutory deadlines or identifying areas of work which are frequently the subject of requests.

END

Appendix 1

Details of Contents of FOI Guides, Manuals and CPU Notices

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Freedom of Information – Decision Makers Manual

Part 1: Processing and FOI Request

Table of Contents

Chapter 1	Brief Overview and Checklist
Chapter 2	The Essentials
Chapter 3	Acknowledging Receipt of Request
Chapter 4	Transfer of Requests
Chapter 5	Extensions of Time Limit
Chapter 6	Administrative Reasons
Chapter 7	Deferral of Access
Chapter 8	Charges
Chapter 9	Summary of Time Limits
Chapter 10	Access to Parts of Records
Chapter 11	Forms of Access
Chapter 12	Notifying of the Decision & Preparing the Statement
Chapter 13	Amendment of Personal Information (Section 17)
Chapter 14	Reasons for Decisions (Section 18)

Appendix 1 – Sample Schedule of Records and Letter Templates

Schedule of Records - Summary of Decision Making

Letter 1 - Insufficient particulars been given by the requester / offer to assist

Letter 2 - Acknowledgement of FOI request

Letter 3 - Acknowledgement of FOI request - part held by others

Letter 4 - Notice of transfer of FOI Request for (Personal Information/Advice) to requester to withdraw request (Non-personal information) if the records are held by only one other body

Letter 5a - Advice letter if more than one body is involved

Letter 5b - Request for search

Letter 6 - Records cannot be located or do not exist

Letter 7 - Letter informing applicant of extension of time

Letter 8 - Letter requesting deposit

Letter 9a - Receipt for deposit received

Letter 9b - Receipt for final fee

Letter 10 - Required consultation with third party

Letter 11 - Letter to requester informing of third party involvement

Letter 12 - Advice to third party of decision / appeal rights

Letter 13 - Third party access granted

Letter 14a - Letter to applicant granting request

Letter 14b - Letter to applicant refusing request

Letter 14c - Letter to applicant part granting request

Letter 15a - Acknowledgement of receipt of appeal

Letter 15b - Sample advice of internal review - original decision affirmed

Letter 15c - Sample advice of internal review - original decision varied or annulled

Appendix 2 - Central Policy Unit Notices 1 to 21 inclusive

Freedom of Information – Decision Makers Manual

Part 2: Exemptions & Consultation Procedures

Table of Contents

Chapter 1	Brief Introduction to Exemptions
Chapter 2	Section 19 - Meetings of the Government
Chapter 3	Section 20 - Deliberations of Public Bodies
Chapter 4	Section 21 - Functions and Negotiations of Public Bodies
Chapter 5	Section 22 - Parliamentary, Court and certain other matters
Chapter 6	Section 23 - Law Enforcement and Public Safety
Chapter 7	Section 24 - Security, Defence and International Relations
Chapter 8	Section 25 - Ministerial Certificates
Chapter 9	Section 26 - Information obtained in Confidence
Chapter 10	Section 27 - Commercially Sensitive Information
Chapter 11	Section 28 - Personal Information
Chapter 12	Section 29 - Consultation Procedures
Chapter 13	Section 30 - Research and Natural Resources
Chapter 14	Section 31 - Economic and Financial Interests of the State and Public Bodies
Chapter 15	Section 32 - Enactments relating to Non-disclosure of Records

Short Guide

Freedom of Information Act 1997 Freedom of Information (Amendment) Act 2003

Chapter 1:	Introduction
Chapter 2:	Publication Requirements
Chapter 3:	Processing Requests
Chapter 4:	Exemptions
Chapter 5:	Restriction of Act
Chapter 6:	Review of Decisions
Chapter 7:	Charges
Chapter 8:	Training and Further Information

Central Policy Unit Notices 1 to 25 inclusive

Notice No. 01 Section 16 Manual

Notice No. 02 Central Policy Unit - Notice No. 2 Access to Personnel Records

Notice No. 03 Access to Personnel Records created prior to 31 December 1997

Notice No 04 Handling by public bodies of FOI fees which are potentially returnable

Notice No 05 Release of Information outside of the FOI Act

Notice No 06 FOI and Written Representations to Ministers

Notice No 07 Protections for civil servants against legal actions in respect of the contents of documents created in the course of official duties

Notice No 08 Information provided in confidence to a public body

Notice No. 09 FOI & Public Procurement

Notice No 10 Primary Responsibility for Certain Personnel Records

Notice No. 11 Charges

Notice No 12 Records of public bodies not currently subject to FOI

Notice No 13 Requests involving third parties - A step by step guide

Notice No 14 FOI requests for Board Papers held by Government Departments

Notice No 15 Sealed Chief Medical Officer (CMO) Medical Reports

Notice No. 16 Checklist

Notice No. 17 Assistance to Persons with a Disability in Exercising FOI Rights.

Notice No. 18 FOI and International Relations

Notice No. 19 Contempt of Court – Orders of Discovery

Notice No. 20 Informal Consultations between Public Bodies on Foot of FOI Requests

Notice No. 21 Guidelines in Relation to the Display of FOI Requests on Websites

Notice No. 22 Appeals to the High Court and Supreme Court

Notice No. 23 Data Protection and Freedom of Information in the Public Sector

Notice No. 25 Guidelines in relation to records of government meetings

Extract from Briefing Note for Government meeting of 1 July 2014

Item No. 18: Report Stage Amendments for Freedom of Information Bill 2013/ Draft Code of Practice for Freedom of Information

M/PER seeks approval for a number of Report Stage Amendments to the FOI Bill, principally to remove the €15 application fee and increase the threshold for search and retrieval charges from two to five hours.

He intends to publish a number of supporting documents including the Report of the External Review Group, the draft Code of Practice for public consultation and the assessment for the case for the reform of the FOI fees.

The removal of the €15 upfront fee is in line with the commitment in the Programme for Government to restore the provisions of FOI in line with the 1997 Act.

A number of Departments have raised concerns that the proposed changes to the fee regime will lead to a significant increase in non-personal FOI requests, putting a further strain on already reduced resources. Departments which typically attract a higher level/proportion of non-personal requests will be most exposed to this risk – the Memo says that an analysis of the volume following the 2003 change suggests an overall doubling of such requests.

In the case of this Department, an increase significantly greater even than a doubling in the number of FOI requests would seem likely, as over 95% of requests here are non-personal. This Department already charges for search and retrieval in many cases, but this will no longer be possible as most fall below the proposed new five hour threshold.

M/PER's view is that the administrative burden arising can be reduced through effective operation of the proposed new Code of Practice for FOI, i.e. stronger central supports, proper charging for search and retrieval costs over five hours, new provisions to refuse voluminous requests, and proactive publication of records and FOI disclosure logs.

A key element to mitigating any resourcing risk will be ensuring the strengthened leadership role by the Central Policy Unit in D/PER and the establishment of FOI networks, to support effective FOI implementation across public bodies. However, there is no evidence to date of any increased support from D/PER and they should ensure this is well advanced before the new legislation is enacted.

In response to a number of concerns the Minister will consider a different retrospective date for certain bodies (NTMA, NAMA, Irish Rail) on receipt of a detailed business case supporting same.



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Uimhir Thagartha: S180/20/10/1772

CRUINNIÚ RIALTAIS

Dáta: 01/07/2014

Ábhar: Report Stage Amendments for Freedom of Information Bill 2013/ Draft Code of Practice for Freedom of Information

An tAire a thionscain: Oifig an Aire Caiteachais Phoiblí agus Athchóirithe

Dáta an Mheabhráin: 27/06/2014

Cinneadh an Rialtais:

(1) approved the amendments to the Freedom of Information Bill 2013, as attached to the memorandum, including those in relation to reform of the FOI fee regime, which the Minister for Public Expenditure and Reform proposes to present at Report Stage in Dáil Éireann; and

(2) noted the intention of the Minister to:

(i) remove the upfront FOI fee of €15, to restore Freedom of Information legislation in line with the commitment in the Programme for Government; and

(ii) publish the detailed assessment of the case for reform of the FOI fees regime and the removal of the application fee which sets out the basis to the proposed approach; and

(3) agreed to:

(i) the publication of the Report of the External Review Group on FOI on the website of the Department of Public Expenditure and Reform;

(ii) the publication of the draft Code of Practice for Freedom of Information (FOI); and

(iii) the initiation of a short public consultation on the draft Code to assist in its finalisation.

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Ard-Rúnaí an Rialtais

Cóip curtha chuig: Oifig an Aire Airgeadais, Oifig an Taoisigh, Oifig an Aire Iompair, Turasóireachta agus Spóirt, Oifig an Aire Leanaí agus Gnóthaí Óige, Oifig an Aire Ealaón, Oidhreachta agus Gaeltachta, Oifig an Aire Sláinte, Oifig an Aire Gnóthaí Eachtracha agus Trádála, Oifig an Aire Dlí agus Cirt agus Comhionannais, Oifig an Aire Talmhaíochta, Bia agus Mara, Oifig an Árd-Aighne, Oifig an Aire Cosanta, Oifig an Aire Post, Fiontar agus Nuálaíochta, Oifig an Aire Comhshaoil, Pobail agus Rialtais Áitiúil., Oifig an Aire Tithíochta, Pleanála, Pobail agus Rialtais Áitiúil, Oifig an Aire Ealaón, Oidhreachta, Gnóthaí Réigiúnacha, Tuaithe agus Gaeltachta, Oifig an Aire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha, Oifig an Aire Oideachais agus Scileanna, Oifig an Aire Coimirce Sóisialaí, Oifig an Aire Cumarsáide, Gníomhaithe ar son na hAeráide agus Comhshaoil, Oifig an Aire Stáit ag Roinn an Taoisigh